MISSISSIPPI CODE 1972

Annotated

Crimes

(§ 97-11-1 to
§ 97-45-33)

Title 97

TABLE OF CONTENTS

VOLUME 21A

TITLE 97. CRIMES (CONT'D)

CHAP. No.		BEGINNING SECTION
11.	Offenses Involving Public Officials	97-11-1
13.	Election Crimes	97-13-1
15.	Offenses Affecting Highways, Ferries and Waterways	97-15-1
17.	Crimes Against Property	97-17-1
19.	False Pretenses and Cheats	97-19-1
21.	Forgery and Counterfeiting	97-21-1
23.	Offenses Affecting Trade, Business and Professions	97-23-1
25.	Offenses Affecting Railroads, Public Utilities and Carriers	97-25-1
27.	Crimes Affecting Public Health	97-27-1
29.	Crimes Against Public Morals and Decency	97-29-1
31.	Intoxicating Beverage Offenses	97-31-1
32.	Tobacco Offenses	97-32-1
33.	Gambling and Lotteries	97-33-1
35.	Crimes Against Public Peace and Safety	97-35-1
37.	Weapons and Explosives	97-37-1
39.	Dueling	97-39-1
41.	Cruelty to Animals	97-41-1
43.	Racketeer Influenced and Corrupt Organization Act (RICO)	97-43-1
44.	Mississippi Streetgang Act	97-44-1
45.	Computer Crimes and Identity Theft	97-45-1

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MISSISSIPPI CODE

1972

ANNOTATED

ADOPTED AS THE OFFICIAL CODE OF THE
STATE OF MISSISSIPPI
BY THE
1972 SESSION OF THE LEGISLATURE

VOLUME TWENTY-ONE A

CRIMINAL PROCEDURE

§§ 97-11-1 to 97-45-33

CONTAINING PERMANENT PUBLIC STATUTES OF MISSISSIPPI
TO THE END OF THE 2020 REGULAR
LEGISLATIVE SESSION

LexisNexis®

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ISBN 978-1-63280-876-9 (Volume 21A)
ISBN 0-327-09628-4 (Code set)

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Matthew Bender & Company, Inc.

555 Middle Creek Parkway, Colorado Springs, CO 80921

www.lexisnexis.com

(Pub. 44510)

PREFACE

The Mississippi Code of 1972, which became effective on November 1, 1973, is the culmination of nearly four years of effort on the part of the Legislature, the Attorney General's office and the publishers, which brings together provisions of general statutory law having a common subject matter into a more orderly and logical framework of code titles and chapters, and employing a modern and effective section numbering system. A major by-product of the code revision will be the state-owned magnetic computer tape containing the Mississippi Code of 1972, which will be of invaluable assistance to the Legislature and to the state.

The enabling act for the code was a recommendation of the Mississippi State Bar, which resulted in the consideration and passage of Senate Bill 1964, Chapter 465, Laws of 1970, signed into law by Governor John Bell Williams.

The Code Committee provided for in that act was comprised of A. F. Summer, Attorney General, Heber Ladner, Secretary of State, Representative Edgar J. Stephens, Jr., Chairman, House Appropriations Committee, Senator William G. Burgin, Jr., Chairman, Senate Appropriations Committee, Representative H. L. Meredith, Jr., Chairman, House Judiciary "A" and Judiciary en banc Committees, Senator E. K. Collins, Chairman, Senate Judiciary "A" and Judiciary en banc Committees, Representative Ney McKinley Gore, Jr., Chairman, House Judiciary "B" Committee, and Senator William E. Alexander, Chairman, Senate Judiciary "B" Committee. In 1972, Representative Marby Robert Penton and Senator Herman B. Decell, Chairman of House and Senate Judiciary "B" Committees, respectively, became members of the Committee, replacing Representative Gore and Senator Collins, Senator Alexander having been appointed Chairman of Senate Judiciary "A" and Judiciary en banc Committees. The Deputy Attorney General, Delos H. Burks, served the Code Committee as Secretary. Special Assistant Attorney General Fred J. Lotterhos, under the supervision of the Attorney General, was assigned the principal responsibility for the supervision of the recodification, including the consideration and treatment of some 16,000 sections of code manuscript.

Final legislative approval was given to the Mississippi Code of 1972 by passage of Senate Bill 2034, Laws of 1972, which was signed by Governor William L. Waller on April 26, 1972.

The Code Committee is of the opinion that the recodification has been thoroughly and well accomplished, and will result in a greatly improved repository of the general statutory law of the state.

A. F. Summer
Attorney General

PUBLISHER'S FOREWORD

This 2020 Replacement Volume 21A of the Mississippi Code of 1972 Annotated represents material appearing in the original 1973 bound volume, the 2000 Replacement Volume 21, the 2006 Replacement Volume 21, and the 2014 Replacement Volume 21, as well as reflecting amendments, repeals, and new Code provisions enacted by the Mississippi Legislature through the 2020 Regular Legislative Session.

This volume contains the text of Chapters 11 through 45 of Title 97 of the Mississippi Code of 1972 Annotated, as amended through the 2020 Regular Legislative Session. Chapters 1 through 9 of Title 97 appear in Volume 21.

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Many of these cases were decided under the former statutes in effect prior to the enactment of the Code of 1972. These earlier cases have been moved to pertinent sections of the Code where they may be useful in interpreting the current statutes. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals decisions and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 3rd Series
Federal Supplement, 3rd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series
American Law Reports, Federal 2nd Series
Mississippi College Law Review
Mississippi Law Journal

Finally, published Opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

PUBLISHER'S FOREWORD

A comprehensive Index appears at the end of this volume.

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For further information or assistance, please call us toll-free at (800) 833-9844, fax us toll-free at (800) 643-1280, e-mail us at customer.support@bender.com, or write to: Mississippi Code Editor, LexisNexis, 555 Middle Creek Parkway, Colorado Springs, CO 80921.

December 2020 LexisNexis

User's Guide

This guide is designed to help both the lawyer and the layperson get the most out of the Mississippi Code of 1972 Annotated. Information about key features of the Code and suggestions for its more effective use are given under the following headings:

— Advance Code Service
— Advance Sheets
— Amendment Notes
— Analyses
— Code Status
— Comparable Legislation from other States
— Court Rules
— Cross References
— Editor's Notes
— Effective Dates
— Federal Aspects
— History Notes
— Index
— Joint Legislative Committee Notes
— Judicial Decisions
— Opinions of the Attorney General
— Organization and Numbering System
— Placement of Notes
— Replacement Volumes
— Research and Practice References
— Statute Headings
— Tables

If you have a question not addressed by the User's Guide, or comments about your Code service, you may contact us by calling us toll-free at (800) 833-9844, faxing us toll-free at (800) 643-1280, e-mailing us at customer.support@bender.com, or writing to Mississippi Code Editor, LexisNexis, 555 Middle Creek Parkway, Colorado Springs, CO 80921.

ADVANCE CODE SERVICE

Three times a year, at roughly quarterly intervals between delivery of Code supplement pocket parts, we publish the Mississippi Advance Code Service pamphlets. These pamphlets contain updated statutory material and annotations to Attorney General opinions, research and practice references, and recent court decisions construing the Code. Each pamphlet is cumulative, so that each is a "one-stop" source of case notes updating those in your Code bound volumes and pocket parts.

ADVANCE SHEETS

The Advance Sheets consist of a series of pamphlets issued in the spring. The series reproduces the acts passed by the Mississippi Legislature and approved by the Governor during the legislative session. Features include tables showing the impact of legislation on sections of the Mississippi Code of 1972 Annotated, and a cumulative index. These pamphlets enable the user to receive a preview of approved legislation prior to supplement availability, and serve as an excellent source of legislative history.

AMENDMENT NOTES

Every time a Code provision is amended, we prepare a note describing the effect of the amendment. By reading the note, you can ascertain the impact of the change without having to check the former statute itself.

Amendment notes are retained in the Supplement until the bound volume is replaced, at which time notes from all but the last two years are deleted.

Amendment notes are retained online indefinitely.

ANALYSES

Each title, chapter, and article appearing in a bound volume or supplement is preceded by an analysis. The analysis details the scope of the title, chapter, and article and enables you to see at a glance the content of the title, chapter, and article without resorting to a page-by-page examination in the bound volume or supplement.

CODE STATUS

The Mississippi Code of 1972 Annotated is Mississippi's official code and is considered evidence of the statute law of the State of Mississippi (see § 1-1-8). The Code was enacted by Chapter 394 of the Laws of 1972, which was signed by the Governor on April 26, 1972.

Title 1, Chapters 1 through 5 of the Code contain statutes governing the status and construction of the Code.

COMPARABLE LEGISLATION FROM OTHER STATES

Notes to comparable legislation from other states appear for uniform laws, interstate compacts, statutory provisions pertaining to reciprocity and cooperation with other states, and various important statutes of general interest. Other states' statutes that are similar in subject matter and scope to those of Mississippi are cited, generally, under the first section of the chapter or article to which they pertain. Occasionally, comparable legislation pertains to only one section, in which case it is cited under that section rather than at the chapter or article level.

See also *Federal Aspects*.

COURT RULES

The Mississippi Court Rules are published separately by LexisNexis in a fully annotated softcover volume which is replaced annually and supplemented semi-annually.

The Court Rules volume contains statewide rules of procedure of the state courts, the local rules of the United States district courts and bankruptcy courts for Mississippi, and the rules of the United States Court of Appeals for the Fifth Circuit. Rules are received from the courts and edited only for stylistic consistency. For further information, see the Preface to the Mississippi Court Rules volume.

CROSS REFERENCES

Cross references refer you to notes under other Code sections, that may affect a law or place it in context. Cross references also are used under repealed provisions to refer you to an existing law on a similar subject. Cross references do not cite all related statutes, however, since these can be identified by using the General Index.

See also *Comparable Legislation from other States* and *Federal Aspects*.

EDITOR'S NOTES

Editor's notes are notes prepared by the Publisher that contain information about important or unusual features of a law, or special circumstances surrounding passage of the law, that are not apparent from the law's text.

See also *Effective Dates*.

EFFECTIVE DATES

Absent a specific effective date provision within an act, Mississippi laws generally take effect upon approval date, which is the date the act is signed into law by the Governor.

FEDERAL ASPECTS

Notes to federal legislation that is similar in subject matter and scope to the laws of Mississippi are referenced throughout the Code. In addition, the Code contains the United States Code Service citation for any federal law that is referred to in a Mississippi statute by its popular name or by its session law designation.

See also *Comparable Legislation from other States*.

HISTORY NOTES

Each section of the Code is followed by a brief note showing the acts of the Legislature on which it is based, including the act that originally enacted the section and any subsequent amendments.

The history note follows the section text, preceding any other annotations for the section. Information in the history note is listed in chronological order, first by Codes, then by Laws, with the most recent information listed last. If a section has been renumbered, the former number will appear in the history note.

The tables volume should also be consulted when researching the history of a statutory section, since it contains cross reference tables that provide a statutory citation for each section of the session laws and the date each act went into effect.

INDEX

The Code is completely indexed in two softcover Index volumes, which are updated and replaced annually. In addition, each volume of the Code is followed by its own index. As accurate and thorough as the Index is, your best defense against index wild goose chases is familiarity with indexing techniques. To that end, an explanatory Foreword to the Index appears in the first Index volume.

JOINT LEGISLATIVE COMMITTEE NOTES

Joint Legislative Committee notes are included in the Code to describe codification decisions made by the Mississippi Joint Legislative Committee on Compilation, Revision and Publication of Legislation. Examples of Committee actions that warrant the inclusion of a note are the integration of multiple amendments to a single Code section during the same legislative session, and the correction of typographical errors appearing in the Code.

JUDICIAL DECISIONS

Every reported case from the Supreme Court of Mississippi, the Court of Appeals of Mississippi, federal district courts for Mississippi, the federal Fifth Circuit Court of Appeals and the United States Supreme Court has been read for constructions of Mississippi law. These constructions are noted under pertinent sections of the statutes or Mississippi Constitution provisions, under the heading "Judicial Decisions." Where a decision has been reviewed by a higher court, subsequent judicial history and disposition is noted in the case note if such disposition has any bearing on the annotated material. Where two or more decisions state the same rule of law, the case citations are cumulated under one case note.

Case notes are grouped together under headings called "catchlines." The catchlines identify the basic subject matter of the case notes and assist the user in locating pertinent notes. Catchlines are numbered and arranged thematically, with "In general" first. Where there are two or more catchlines, an analysis, listing all the catchlines, precedes the annotations.

Frequently, statutes carry notes to cases that arose under earlier laws on the same subject. Case notes are retained so long as the editor believes the note will have some relevance under current law, though of course the relevance may be diminished by later changes in the law. These case notes appear under the heading "Decisions under former law."

OPINIONS OF THE ATTORNEY GENERAL

Opinions of the Attorney General for the State of Mississippi have been read for constructions of Mississippi law. Notes describing the subject matter of the opinions have been placed under relevant Code provisions under the heading "Opinions of the Attorney General."

ORGANIZATION AND NUMBERING SYSTEM

The Code is organized by titles, chapters, articles, subarticles, undesignated centered headings and sections. Analyses at the beginning of each title, chapter, article, and subarticle help you understand the internal arrangement of each Code unit (see *Analyses*).

Odd numbers are generally used for the numbering of titles, chapters and sections. Even numbers have been used for some chapters and sections so that a particular new chapter or section might be logically placed with other chapters and sections dealing with the same or similar subject matter. Similarly, the use of numbers with decimal points has been used for some sections in order that they may be inserted among other sections pertaining to the same subject.

The title, chapter, and section for each Code section is revealed by its section number. Thus, in the designation "§ 1-3-65," the first digit ("1") means the provision is in Title 1 ("Laws and Statutes"); the second ("3") indicates Chapter 3 ("Construction of Statutes"); and the last two digits ("65") mean the 65th section in that chapter ("Construction of terms generally").

Articles and subarticles are not reflected by section number designations.

Within sections, subsections and paragraphs usually are designated following this pattern: (1)(a)(i)1. or (1)(a)(i)A. A distinctive indention scheme is applied to suggest the relative value of each unit within this hierarchy.

PLACEMENT OF NOTES

Where a note pertains to a single statute section, it will of course be set out following that section. In many instances, however, a note applies equally to several statute sections or to an entire chapter or article. If the pertinent sections are scattered, or few in number, the note will be duplicated for each section. But where the note applies to all or most of the sections in a chapter or article, we prevent the space-consuming repetition of notes by placing the note at the very beginning of the chapter or article.

REPLACEMENT VOLUMES

The Code is periodically updated and streamlined by the replacement of volumes. Although a current set of the Code contains all currently applicable statutes, we encourage you to retain replaced volumes and their supplement pockets parts for historical reference.

RESEARCH AND PRACTICE REFERENCES

Citations to references in American Jurisprudence, American Jurisprudence Pleading and Practice, American Jurisprudence Proof of Facts, American Jurisprudence Trials, American Law Reports, First through Sixth Series, ALR Federal, Corpus Juris Secundum, various other treatises and practice guides, and Mississippi law journals are given under this heading, wherever the references appear to discuss the statute under which the citation appears, or a topic related to the statute. These citations are intended only to give you a starting point for your library research. The Mississippi law journals include Mississippi Law Journal and Mississippi College Law Review.

STATUTE HEADINGS

Headings or "catchlines" for Code sections and subsections are generally created and maintained by the publisher. They are mere catchwords and are not to be deemed or taken as the official title of a section or as a part of the section. Your suggestions for the improvement of particular catchlines are invited.

TABLES

The Mississippi Code of 1972 Annotated contains several tables that can assist you in your research. These are published in the Statutory Tables volume of the Code, and include the following:

- Sections of the Code of 1930 carried into the Code of 1942.
- Sections of the Code of 1942 carried into the Code of 1972.
- Allocation of Acts of Legislature, 1931 — 1972.
- Allocation of Acts of Legislature, 1972 — present.
- Consolidated Tables of amendments and repeals of 1942 Code sections.
- Consolidated Tables of amendments and repeals of 1972 Code sections.

GENERAL OUTLINE OF TITLES AND CHAPTERS

CONSTITUTION OF THE UNITED STATES .... Volume 1
CONSTITUTION OF MISSISSIPPI .... Volume 1
AMENDMENTS .... Volume 1

TITLE 1. LAWS AND STATUTES

Beginning Section
CHAPTER 1. Code of 1972 1-1-1
3. Construction of Statutes 1-3-1
5. Session Laws and Journals 1-5-1

TITLE 3. STATE SOVEREIGNTY, JURISDICTION AND HOLIDAYS

CHAPTER 1. State Sovereignty Commission [Repealed] 3-1-1
3. State Boundaries, Holidays, and State Emblems 3-3-1
5. Acquisition of Land by United States Government 3-5-1
7. Compact for a Balanced Budget 3-7-1

TITLE 5. LEGISLATIVE DEPARTMENT

CHAPTER 1. Legislature 5-1-1
3. Legislative Committees 5-3-1
5. Interstate Cooperation 5-5-1
7. Lobbying [Repealed] 5-7-1
8. Lobbying Law Reform Act of 1994 5-8-1
9. Agency Review 5-9-1
11. Abolishment of Agencies 5-11-1

TITLE 7. EXECUTIVE DEPARTMENT

CHAPTER 1. Governor 7-1-1
3. Secretary of State 7-3-1
5. Attorney General 7-5-1
7. State Fiscal Officer; Department of Audit 7-7-1
9. State Treasurer 7-9-1
11. Secretary of State; Land Records 7-11-1
13. Mississippi Administrative Reorganization Act 7-13-1
15. Executive Branch Reorganization Study Commission [Repealed] 7-15-1
17. Mississippi Executive Reorganization Act of 1989 7-17-1

TITLE 9. COURTS

Beginning Section
Chapter 1. Provisions Common to Courts 9-1-1
3. Supreme Court 9-3-1
4. Court of Appeals of the State of Mississippi 9-4-1
5. Chancery Courts 9-5-1
7. Circuit Courts 9-7-1
9. County Courts 9-9-1
11. Justice Courts 9-11-1
13. Court Reporters and Court Reporting 9-13-1
15. Judicial Council [Repealed] 9-15-1
17. Court Administrators 9-17-1
19. Commission on Judicial Performance 9-19-1
21. Administrative Office of Courts 9-21-1
23. Drug Courts 9-23-1
25. Veterans Treatment Courts 9-25-1
27. Rivers McGraw Mental Health Diversion Pilot Program Act 9-27-1

TITLE 11. CIVIL PRACTICE AND PROCEDURE

Chapter 1. Practice and Procedure Provisions Common to Courts 11-1-1
3. Practice and Procedure in Supreme Court 11-3-1
5. Practice and Procedure in Chancery Courts 11-5-1
7. Practice and Procedure in Circuit Courts 11-7-1
9. Practice and Procedure in County Courts and Justice Courts 11-9-1
11. Venue of Actions 11-11-1
13. Injunctions 11-13-1
15. Arbitration and Award 11-15-1
17. Suits to Confirm Title or Interest and to Remove Clouds on Title 11-17-1
19. Ejectment 11-19-1
21. Partition of Property 11-21-1
23. Trial of Right of Property 11-23-1
25. Unlawful Entry and Detainer 11-25-1
27. Eminent Domain 11-27-1
29. Sequestration 11-29-1
31. Attachment in Chancery Against Nonresident, Absent or Absconding Debtors 11-31-1
33. Attachment at Law Against Debtors 11-33-1
35. Garnishment 11-35-1
37. Replevin 11-37-1
38. Claim and Delivery 11-38-1

TITLE 11. CIVIL PRACTICE AND PROCEDURE (Cont'd)

Beginning Section

39. Quo Warranto 11-39-1
41. Mandamus; Prohibition 11-41-1
43. Habeas Corpus 11-43-1
44. Compensation to Victims of Wrongful Conviction and Imprisonment 11-44-1
45. Suits by and Against the State or Its Political Subdivisions 11-45-1
46. Immunity of State and Political Subdivisions From Liability and Suit for Torts and Torts of Employees 11-46-1
47. Lis Pendens 11-47-1
49. Rights and Duties of Attorneys, Generally 11-49-1
51. Appeals 11-51-1
53. Costs 11-53-1
55. Litigation Accountability Act of 1988 11-55-1
57. Structured Settlements 11-57-1
59. Uniform Interstate Depositions and Discovery Act 11-59-1
61. Mississippi Religious Freedom Restoration Act 11-61-1
62. Protecting Freedom of Conscience from Government Discrimination Act 11-62-1
63. Application of Foreign Law 11-63-1
65. Enforcement of Federal Laws, Orders, Rules ... 11-65-1
67. Asbestos Bankruptcy Trust Claims Transparency Act 11-67-1
69. Liability Exemption for Furnishing Information Concerning Insurance Fraud 11-69-1
71. Mississippi Back-to-Business Liability Assurance and Health Care Emergency Response Liability Protection Act 11-71-1

TITLE 13. EVIDENCE, PROCESS AND JURIES

CHAPTER 1. Evidence 13-1-1
3. Process, Notice, and Publication 13-3-1
5. Juries 13-5-1
7. State Grand Jury Act 13-7-1

TITLE 15. LIMITATIONS OF ACTIONS AND PREVENTION OF FRAUDS

CHAPTER 1. Limitation of Actions 15-1-1
3. Prevention of Frauds 15-3-1

TITLE 17. LOCAL GOVERNMENT; PROVISIONS COMMON TO COUNTIES AND MUNICIPALITIES

Beginning Section

Chapter 1. Zoning, Planning and Subdivision Regulation 17-1-1
2. Building Codes 17-2-1
3. Promotion of Trade, Conventions and Tourism 17-3-1
5. Jails, Waterworks and Other Improvements 17-5-1
7. Removal of Local Governments in Emergencies 17-7-1
9. Lease of Mineral Lands other than Sixteenth Section or "In Lieu" Lands 17-9-1
11. Gulf Regional District Law 17-11-1
13. Interlocal Cooperation of Governmental Units 17-13-1
15. Human Resource Agencies 17-15-1
17. Solid Wastes Disposal 17-17-1
18. Mississippi Hazardous Waste Facility Siting Act of 1990 17-18-1
19. Appropriations to Planning and Development Districts 17-19-1
21. Finance and Taxation 17-21-1
23. Rural Fire Truck Acquisition Assistance Programs 17-23-1
25. General Provisions Relating to Counties and Municipalities 17-25-1
27. Municipal Historical Hamlet Act 17-27-1
29. Mississippi Entertainment District Act 17-29-1

TITLE 19. COUNTIES AND COUNTY OFFICERS

Chapter 1. County Boundaries 19-1-1
2. County Government Reorganization Act 19-2-1
3. Board of Supervisors 19-3-1
4. County Administrator 19-4-1
5. Health, Safety and Public Welfare 19-5-1
7. Property and Facilities 19-7-1
9. Finance and Taxation 19-9-1
11. County Budget 19-11-1
13. Contracts, Claims and Transaction of Business with Counties 19-13-1
15. Records and Recording 19-15-1
17. County Auditors 19-17-1
19. Constables 19-19-1
21. Coroners 19-21-1
23. County Attorneys 19-23-1
25. Sheriffs 19-25-1
27. Surveyors and Surveys 19-27-1

TITLE 19. COUNTIES AND COUNTY OFFICERS (Cont'd)

Beginning Section
29. Local and Regional Railroad Authorities 19-29-1
31. Public Improvement Districts 19-31-1

TITLE 21. MUNICIPALITIES

Chapter 1. Classification, Creation, Abolition, and Expansion 21-1-1
3. Code Charters 21-3-1
5. Commission Form of Government 21-5-1
7. Council Form of Government 21-7-1
8. Mayor-Council Form of Government 21-8-1
9. Council-Manager Plan of Government 21-9-1
11. Municipal Elections [Repealed] 21-11-1
13. Ordinances 21-13-1
15. Officers and Records 21-15-1
17. General Powers 21-17-1
19. Health, Safety, and Welfare 21-19-1
21. Police and Police Departments 21-21-1
23. Municipal Courts 21-23-1
25. Fire Departments and Fire Districts 21-25-1
27. Public Utilities and Transportation 21-27-1
29. Employees' Retirement and Disability Systems 21-29-1
31. Civil Service 21-31-1
33. Taxation and Finance 21-33-1
35. Municipal Budget 21-35-1
37. Streets, Parks and Other Public Property 21-37-1
38. Acquisition or Lease of Real Property from Federal Government for Parks, Recreation, and Tourism 21-38-1
39. Contracts and Claims 21-39-1
41. Special Improvements 21-41-1
43. Business Improvement Districts 21-43-1
45. Tax Increment Financing 21-45-1
47. Delta Natural Gas District 21-47-1

TITLE 23. ELECTIONS

Chapter 1. Qualification of Candidates and Registration of Political Parties [Repealed] 23-1-1
3. Corrupt Practices [Repealed] 23-3-1
5. Registration and Elections [Repealed] 23-5-1
7. Voting Machines and Electronic Voting System [Repealed] 23-7-1

TITLE 23. ELECTIONS (Cont'd)

		Beginning Section
9.	Absentee Ballot [Repealed]	23-9-1
11.	Presidential Election Law [Repealed]	23-11-1
13.	Mississippi Presidential Preference Primary and Delegate Selection Law [Repealed]	23-13-1
15.	Mississippi Election Code	23-15-1
17.	Amendments to Constitution by Voter Initiative	23-17-1

TITLE 25. PUBLIC OFFICERS AND EMPLOYEES; PUBLIC RECORDS

CHAPTER	1.	Public Officers; General Provisions	25-1-1
	3.	Salaries and Compensation	25-3-1
	4.	Ethics in Government	25-4-1
	5.	Removals From Office	25-5-1
	7.	Fees	25-7-1
	9.	Statewide Personnel System	25-9-1
	11.	Social Security and Public Employees' Retirement and Disability Benefits	25-11-1
	13.	Highway Safety Patrol Retirement System	25-13-1
	14.	Government Employees Deferred Compensation Plan Law	25-14-1
	15.	Group Insurance for Public Employees	25-15-1
	17.	Cafeteria Fringe Benefit Plans	25-17-1
	19.	Public Employer-Assisted Housing Program	25-19-1
	31.	District Attorneys	25-31-1
	32.	Public Defenders	25-32-1
	33.	Notaries Public	25-33-1
	34.	Revised Mississippi Law on Notarial Acts	25-34-1
	41.	Open Meetings	25-41-1
	43.	Administrative Procedures	25-43-1.101
	45.	Permit and Licensing Procedures	25-45-1
	51.	State Depository for Public Documents	25-51-1
	53.	Mississippi Department of Information Technology Services (MDITS)	25-53-1
	55.	Lost Records	25-55-1
	57.	Destruction of Records [Repealed]	25-57-1
	58.	Geographic Information System	25-58-1
	59.	Archives and Records Management	25-59-1
	60.	Local Government Records	25-60-1
	61.	Public Access to Public Records	25-61-1
	62.	Disclosure of Personal Information of Section 501(c) Entitly	25-62-1
	63.	Digital Signature Act	25-63-1

TITLE 25. PUBLIC OFFICERS AND EMPLOYEES; PUBLIC RECORDS (Cont'd)

Beginning Section

65. Agency, University and Community/Junior College Internal Auditing Program 25-65-1

TITLE 27. TAXATION AND FINANCE

CHAPTER 1. Assessors and County Tax Collectors 27-1-1
3. Department of Revenue 27-3-1
4. Board of Tax Appeals 27-4-1
5. Motor Vehicle Comptroller 27-5-1
7. Income Tax and Withholding 27-7-1
8. Mississippi S Corporation Income Tax Act 27-8-1
9. Estate Tax 27-9-1
10. Uniform Estate Tax Apportionment Act 27-10-1
11. Amusement Tax [Repealed] 27-11-1
13. Corporation Franchise Tax 27-13-1
15. Statewide Privilege Taxes 27-15-1
17. Local Privilege Taxes 27-17-1
19. Motor Vehicle Privilege and Excise Taxes 27-19-1
21. Finance Company Privilege Tax 27-21-1
23. Chain Store Privilege Tax [Repealed] 27-23-1
25. Severance Taxes 27-25-1
27. Vending and Amusement Machine Taxes 27-27-1
29. Ad Valorem Taxes—General Provisions 27-29-1
31. Ad Valorem Taxes—General Exemptions 27-31-1
33. Ad Valorem Taxes—Homestead Exemptions 27-33-1
35. Ad Valorem Taxes—Assessment 27-35-1
37. Ad Valorem Taxes—Payments in Lieu of Taxes 27-37-1
38. Ad Valorem Taxes—Telecommunications Tax Reform 27-38-1
39. Ad Valorem Taxes—State and Local Levies 27-39-1
41. Ad Valorem Taxes—Collection 27-41-1
43. Ad Valorem Taxes—Notice of Tax Sale to Owners and Lienors 27-43-1
45. Ad Valorem Taxes—Redemption of Land Sold for Taxes 27-45-1
47. Ad Valorem Taxes—Assignment of Tax Liens .. 27-47-1
49. Ad Valorem Taxes—Insolvencies 27-49-1
51. Ad Valorem Taxes—Motor Vehicles 27-51-1
53. Ad Valorem Taxes—Mobile Homes 27-53-1
55. Gasoline and Motor Fuel Taxes 27-55-1
57. Tax on Oils 27-57-1
59. Liquefied Compressed Gas Tax 27-59-1

TITLE 27. TAXATION AND FINANCE (Cont'd)

Beginning Section
61. Interstate Commercial Carriers Motor Fuel Tax 27-61-1
63. Motor Vehicle Fueling Centers [Repealed] 27-63-1
65. Sales Tax 27-65-1
67. Use or Compensating Taxes 27-67-1
68. Uniform Sales and Use Tax Administration Law 27-68-1
69. Tobacco Tax 27-69-1
70. Nonsettling-Manufacturer Cigarette Fee 27-70-1
71. Alcoholic Beverage Taxes 27-71-1
73. Tax Refunds 27-73-1
75. Reciprocal Collection of Taxes 27-75-1
77. Appellate Review for Taxpayers Aggrieved by Certain Actions of the Department of Revenue 27-77-1
101. Annual Reports by Departments of Government, State-Supported Institutions and Taxing Entities 27-101-1
103. State Budget 27-103-1
104. State Fiscal Affairs 27-104-1
105. Depositories 27-105-1
106. Iran Divestment Act of 2015 27-106-1
107. Disaster Relief 27-107-1
109. Cruise Vessels 27-109-1
111. Payment Credit Vouchers as Credit Against Income and Corporation Franchise Tax Liabilities [Repealed effective July 1, 2018] 27-111-1
113. Facilitating Business Rapid Response to State Declared Disasters Act of 2015 27-113-1
115. Alyce G. Clarke Mississippi Lottery Law 27-115-1
117. Israel Support Act of 2019 27-117-1

TITLE 29. PUBLIC LANDS, BUILDINGS AND PROPERTY

Chapter 1. Public Lands 29-1-1
3. Sixteenth Section and Lieu Lands 29-3-1
5. Care of Capitol, Old Capitol, State Office Buildings and Executive Mansion 29-5-1
7. Mineral Leases of State Lands 29-7-1
9. Inventories of State Property 29-9-1
11. Energy Conservation in Public Buildings [Repealed] 29-11-1
13. Flood Insurance for State-Owned Buildings 29-13-1
15. Public Trust Tidelands 29-15-1
17. State Agency Repair and Renovation 29-17-4

TITLE 31. PUBLIC BUSINESS, BONDS AND OBLIGATIONS

Beginning Section
CHAPTER 1. General Provisions Relative to Public Contracts 31-1-1
3. State Board of Public Contractors 31-3-1
5. Public Works Contracts 31-5-1
7. Public Purchases 31-7-1
8. Acquisition of Public Buildings, Facilities, and Equipment Through Rental Contracts 31-8-1
9. Surplus Property Procurement Commission 31-9-1
11. State Construction Projects 31-11-1
13. Validation of Public Bonds 31-13-1
15. Refunding Bonds 31-15-1
17. State Bonds; Retirement of Bonds 31-17-1
18. Variable Rate Debt Instruments 31-18-1
19. Public Debts 31-19-1
21. Registered Bonds 31-21-1
23. Mississippi Private Activity Bonds Allocation Act 31-23-1
25. Mississippi Development Bank Act 31-25-1
27. Mississippi Bond Refinancing Act 31-27-1
29. Institute for Technology Development 31-29-1
31. Mississippi Telecommunications Conference and Training Center 31-31-1

TITLE 33. MILITARY AFFAIRS

CHAPTER 1. Definitions and General Provisions Relating to the Military Forces 33-1-1
3. Commander in Chief, Military Department, and Governor's Staff 33-3-1
4. Mississippi Military Family Relief Fund 33-4-1
5. The Militia and Mississippi State Guard 33-5-1
7. National Guard 33-7-1
9. Property and Finances 33-9-1
11. Training Facilities 33-11-1
13. Mississippi Code of Military Justice 33-13-1
15. Emergency Management and Civil Defense 33-15-1

TITLE 35. WAR VETERANS AND PENSIONS

CHAPTER 1. State Veterans Affairs Board 35-1-1
3. Military Veterans; Miscellaneous Provisions 35-3-1
5. Guardianship of Veterans 35-5-1
7. Veterans' Home Purchase Law 35-7-1
9. Pensions [Repealed] 35-9-1

TITLE 37. EDUCATION

Beginning Section

CHAPTER 1. State Board of Education ... 37-1-1
3. State Department of Education ... 37-3-1
4. Mississippi Community College Board ... 37-4-1
5. County Boards of Education and Superintendents ... 37-5-1
6. Mississippi Uniform School Law ... 37-6-1
7. School Districts; Boards of Trustees of School Districts ... 37-7-1
9. District Superintendents, Principals, Teachers, and Other Employees ... 37-9-1
11. General Provisions Pertaining to Education ... 37-11-1
12. Mississippi Student Religious Liberties Act of 2013 ... 37-12-1
13. Curriculum; School Year and Attendance ... 37-13-1
14. Mary Kirkpatrick Haskell-Mary Sprayberry Public School Nurse Act of 2007 ... 37-14-1
15. Public Schools; Records, Enrollment and Transfer of Pupils ... 37-15-1
16. Statewide Testing Program ... 37-16-1
17. Accreditation of Schools ... 37-17-1
18. Superior-Performing, Exemplary and School At-Risk Schools Programs ... 37-18-1
19. Teacher Compensation ... 37-19-1
20. Remedial Education ... 37-20-1
21. Early Childhood Education ... 37-21-1
22. State Funds for School Districts ... 37-22-1
23. Exceptional Children ... 37-23-1
24. Mississippi Youth Concussion Law ... 37-24-1
25. Driver Education and Training ... 37-25-1
26. State Court Education Fund ... 37-26-1
27. Agricultural High Schools ... 37-27-1
28. Mississippi Charter Schools Act of 2013 ... 37-28-1
29. Junior Colleges ... 37-29-1
31. Vocational Education ... 37-31-1
33. Civilian Vocational Rehabilitation ... 37-33-1
35. Adult Education ... 37-35-1
37. Public Schools; Accounting and Auditing ... 37-37-1
39. Public Schools; Purchases ... 37-39-1
41. Transportation of Pupils ... 37-41-1
43. Textbooks ... 37-43-1
45. State Aid to Public Schools ... 37-45-1
47. State Aid for Construction of School Facilities 37-47-1

TITLE 37. EDUCATION (Cont'd)

		Beginning Section
49.	Loans to Students	37-49-1
51.	Financial Assistance to Children Attending Nonsectarian Private Schools	37-51-1
53.	Summer Normals [Repealed]	37-53-1
55.	School Libraries	37-55-1
57.	Taxation	37-57-1
59.	School Bonds and Obligations	37-59-1
61.	Expenditure of School Funds; Budgets	37-61-1
63.	Educational Television	37-63-1
65.	Closing of Public Schools and Institutions of Higher Learning	37-65-1
67.	Distance Learning Collaborative Act of 2016	37-67-1
68.	Equity in Distance Learning Act	37-68-1
69.	The Energy Academy Act	37-69-1
71.	Mississippi Learn to Earn Act	37-71-1
101.	Institutions of Higher Learning; General Provisions	37-101-1
102.	Off-campus Instructional Programs	37-102-1
103.	Residency and Fees of Students Attending or Applying for Admission to Educational Institutions	37-103-1
104.	Mississippi Educational Facilities Authority Act for Private, Nonprofit Institutions of Higher Learning	37-104-1
105.	Campuses and Streets of State Institutions of Higher Learning	37-105-1
106.	Post-Secondary Education Financial Assistance	37-106-1
107.	Scholarships for Children of Deceased or Disabled Law Enforcement Officers or Firemen [Repealed]	37-107-1
108.	Scholarships for Children of Prisoners of War or Men Missing in Action	37-108-1
109.	Medical Education Loans and Scholarships. [Repealed]	37-109-1
110.	Mississippi Public Management Graduate Intern Program	37-110-1
111.	Fraternities, Sororities and Other Societies	37-111-1
113.	Mississippi State University of Agriculture and Applied Science	37-113-1
115.	University of Mississippi	37-115-1
117.	Mississippi University for Women	37-117-1
119.	University of Southern Mississippi	37-119-1
121.	Alcorn State University	37-121-1

TITLE 37. EDUCATION (Cont'd)

		Beginning Section
123.	Delta State University	37-123-1
125.	Jackson State University	37-125-1
127.	Mississippi Valley State University	37-127-1
129.	Nursing Schools and Scholarships	37-129-1
131.	Teachers Demonstration and Practice Schools	37-131-1
132.	Student Teachers	37-132-1
133.	Technical Institutes	37-133-1
135.	Compacts with Other States	37-135-1
137.	School Asbestos Hazard Elimination Act [Repealed]	37-137-1
138.	Asbestos Abatement Accreditation and Certification Act	37-138-1
139.	Mississippi School for Mathematics and Science	37-139-1
140.	Mississippi School of the Arts	37-140-1
141.	The University Research Center Act of 1988	37-141-1
143.	Omnibus Loan or Scholarship Act of 1991	37-143-1
144.	Mississippi Rural Physicians Scholarship Program	37-144-1
145.	Mississippi Opportunity Loan Program Act	37-145-1
146.	Mississippi Rural Dentists Scholarship Program	37-146-1
147.	Mississippi University Research Authority Act	37-147-1
148.	Strengthening Mississippi Academic Research Through Business Act	37-148-1
149.	Mississippi Teacher Center	37-149-1
151.	Mississippi Accountability and Adequate Education Program Act of 1997	37-151-1
152.	Commission on Restructuring the Mississippi Adequate Education Program (MAEP)	37-152-1
153.	Workforce Training and Education Consolidation Act	37-153-1
154.	State Longitudinal Data System	37-154-1
155.	College Savings Plans of Mississippi	37-155-1
157.	Student Tuition Assistance	37-157-1
159.	Mississippi Teacher Scholarship Programs	37-159-1
160.	Teach for America Act	37-160-1
161.	Mississippi Education Reform Act of 2006	37-161-1
163.	Education Achievement Council	37-163-1
165.	Conversion Charter School Act of 2010	37-165-1
167.	New Start School Program [Repealed]	37-167-1
169.	Mississippi Autism Advisory Committee	37-169-1
171.	Use of School Property by Public for Recreation and Sports	37-171-1

TITLE 37. EDUCATION (Cont'd)

Beginning Section

173. Dyslexia Therapy Scholarship for Students with Dyslexia Program 37-173-1
175. Mississippi Speech-Language Therapy Scholarship for Students with Speech-Language Impairments Program 37-175-1
177. Literacy-Based Promotion Act 37-177-1
179. Districts of Innovation 37-179-1
181. Equal Opportunity for Students with Special Needs Act 37-181-1
183. Postsecondary Education COVID-19 Mitigation Relief Program Act 37-183-1
185. Independent Schools' COVID-19 Assistance Grant Program Act. 37-185-1
187. Mississippi Pandemic Response Broadband Availability Act 37-187-1

TITLE 39. LIBRARIES, ARTS, ARCHIVES AND HISTORY

CHAPTER 1. State Law Library; Legislative Reference Bureau 39-1-1
3. Libraries and Library Commission 39-3-1
5. Archives and History 39-5-1
7. Antiquities 39-7-1
9. Trusts to Promote Arts and Sciences 39-9-1
11. Mississippi Arts Commission 39-11-1
13. Historic Preservation Districts and Landmarks 39-13-1
15. Municipal and County Funds to Support the Arts 39-15-1
17. Mississippi Sports Hall of Fame and Dizzy Dean Museum 39-17-1
19. Museum Unclaimed Property Act 39-19-1
21. Mississippi Craft Center 39-21-1
23. Mississippi Children's Museum 39-23-1
25. Mississippi Arts and Entertainment Center 39-25-1
27. Mississippi Blues Commission 39-27-1
29. Mississippi Commission on the Holocaust 39-29-1
31. Mississippi Bicentennial Celebration Commission [Repealed effective July 1, 2019] 39-31-1
32. Mississippi Country and Western Music Commission 39-32-1
33. Mississippi Country Music Trail 39-33-1
35. Mississippi Sesquicentennial of the American Civil War Commission 39-35-1
37. Mississippi Heritage, History and Culture Trail Program 39-37-1

TITLE 39. LIBRARIES, ARTS, ARCHIVES AND HISTORY (Cont'd)

Beginning Section
39. Mississippi Civil Rights Museum Advisory Commission 39-39-1

TITLE 41. PUBLIC HEALTH

CHAPTER 1. Mississippi Department of Public Health [Repealed] 41-1-1
3. State Board of Health; Local Health Boards and Officers 41-3-1
4. Department of Mental Health 41-4-1
5. Governing Authorities for State Hospitals and Institutions 41-5-1
7. Hospital and Health Care Commissions 41-7-1
9. Regulation of Hospitals; Hospital Records 41-9-1
10. Medical Records 41-10-1
11. State Charity Hospitals; Mississippi Children's Rehabilitation Center 41-11-1
13. Community Hospitals 41-13-1
15. Department for the Prevention of Insanity [Repealed] 41-15-1
17. State Mental Institutions 41-17-1
19. Facilities and Services for Individuals with an Intellectual Disability or Mental Illness 41-19-1
20. Mental Health Accessibility 41-20-1
21. Individuals with Mental Illness or an Intellectual Disability 41-21-1
22. Hemophilia 41-22-1
23. Contagious and Infectious Diseases; Quarantine 41-23-1
24. Sickle Cell Testing Program 41-24-1
25. Disinfection and Sanitation of Buildings and Premises 41-25-1
26. Mississippi Safe Drinking Water Act of 1997 ... 41-26-1
27. Mosquito Control 41-27-1
28. Diabetes 41-28-1
29. Poisons, Drugs and Other Controlled Substances 41-29-1
30. Alcoholism and Alcohol Abuse Prevention, Control and Treatment 41-30-1
31. Commitment of Alcoholics and Drug Addicts for Treatment 41-31-1
32. Commitment of Alcoholics and Drug Addicts to Private Treatment Facilities 41-32-1
33. Tuberculosis and Respiratory Diseases; Tuberculosis Sanatorium 41-33-1

TITLE 41. PUBLIC HEALTH (Cont'd)

Beginning Section

34. Health Care Practice Requirements Pertaining to Transmission of Hepatitis B and HIV 41-34-1
35. Eye Inflammation of Young 41-35-1
36. Determination of Death 41-36-1
37. Autopsies 41-37-1
39. Disposition of Human Bodies or Parts 41-39-1
41. Surgical or Medical Procedures; Consents 41-41-1
42. Family Planning 41-42-1
43. Cemeteries and Burial Grounds 41-43-1
45. Sexual Sterilization [Repealed] 41-45-1
47. Transportation and Possession of Parakeets and Other Birds [Repealed] 41-47-1
49. Regulation of Hotels and Innkeepers 41-49-1
51. Animal and Poultry By-Products Disposal or Rendering Plants 41-51-1
53. Rabies Control in Dogs and Cats 41-53-1
55. Public Ambulance Service 41-55-1
57. Vital Statistics 41-57-1
58. Medical Radiation Technology 41-58-1
59. Emergency Medical Services 41-59-1
60. Emergency Medical Technicians — Paramedics — Use of Automated External Defibrillator .. 41-60-1
61. State Medical Examiner 41-61-1
63. Evaluation and Review of Professional Health Services Providers 41-63-1
65. [Reserved] ....
67. Mississippi Individual On-Site Wastewater Disposal System Law 41-67-1
69. [Reserved] ....
71. Home Health Agencies 41-71-1
73. Hospital Equipment and Facilities Authority Act 41-73-1
75. Ambulatory Surgical Facilities 41-75-1
77. Licensing of Birthing Centers 41-77-1
79. Health Problems of School Children 41-79-1
81. Perinatal Health Care 41-81-1
83. Utilization Review of Availability of Hospital Resources and Medical Services 41-83-1
85. Mississippi Hospice Law of 1995 41-85-1
86. Mississippi Children's Health Care Insurance Program Act 41-86-1
87. Early Intervention Act for Infants and Toddlers 41-87-1
88. Mississippi Child Immunization Act of 1994 41-88-1
89. Infant Mortality Reduction 41-89-1

TITLE 41. PUBLIC HEALTH (Cont'd)

Beginning Section
90. Hearing Impairment of Infants and Toddlers ... 41-90-1
91. Central Cancer Registry ... 41-91-1
93. Osteoporosis Prevention and Treatment Education Act ... 41-93-1
95. Mississippi Health Policy Act of 1994 ... 41-95-1
97. State Employee Wellness and Physical Fitness Programs ... 41-97-1
99. Qualified Health Center Grant Program ... 41-99-1
101. Mississippi Council on Obesity Prevention and Management ... 41-101-1
103. Task Force on Heart Disease and Stroke Prevention 41-103-1
105. Healthcare Coordinating Council ... 41-105-1
107. Health Care Rights of Conscience ... 41-107-1
109. Leonard Morris Chronic Kidney Disease Leadership Task Force ... 41-109-1
111. Child Death Review Panel ... 41-111-1
112. Maternal Mortality Review Committee ... 41-112-1
113. Tobacco Education, Prevention and Cessation Program ... 41-113-1
114. Restrictions on Tobacco Use in Public Facilities 41-114-1
115. Tanning Facilities ... 41-115-1
117. Nurse-Family Partnership Pilot Program ... 41-117-1
119. Health Information Technology Act ... 41-119-1
121. Requirements for Advertisements for Health Care Services ... 41-121-1
123. Office of Mississippi Physician Workforce ... 41-123-1
125. Prescribed Pediatric Extended Care Centers (PPEC) 41-125-1
127. Telemedicine Services ... 41-127-1
129. Umbilical Cord Blood Banking Program Act ... 41-129-1
131. Right to Try Act ... 41-131-1
133. Lay Caregivers for Hospital Patients ... 41-133-1
135. Support and Promotion of Breast-Feeding in Mississippi ... 41-135-1

TITLE 43. PUBLIC WELFARE

CHAPTER
1. Department of Human Services and County Departments of Public Welfare ... 43-1-1
3. Blind Persons ... 43-3-1
5. Schools for the Blind and Deaf ... 43-5-1
6. Rights and Liabilities of Persons with Disabilities 43-6-1
7. Council on Aging ... 43-7-1
9. Old Age Assistance ... 43-9-1

TITLE 43. PUBLIC WELFARE (Cont'd)

		Beginning Section
11.	Institutions for the Aged or Infirm	43-11-1
12.	Medicaid and Human Services Transparency and Fraud Prevention Act	43-12-1
13.	Medical Assistance for the Aged; Medicaid	43-13-1
14.	Mississippi Statewide System of Care for Children and Youth	43-14-1
15.	Child Welfare	43-15-1
16.	Child Residential Home Notification Act	43-16-1
17.	Temporary Assistance to Needy Families	43-17-1
18.	Interstate Compact on the Placement of Children	43-18-1
19.	Support of Natural Children	43-19-1
20.	Child Care Facilities	43-20-1
21.	Youth Court	43-21-1
23.	Family Courts [Repealed]	43-23-1
24.	State Central Registry of Child Abuse Reports; Wide Area Telephone Service for Reporting Child Abuse [Repealed]	43-24-1
25.	Interstate Compacts Relating to Juveniles	43-25-1
26.	Department of Child Protection Services	43-26-1
27.	Department of Youth Services	43-27-1
28.	Mississippi Achieving a Better Life Experience (ABLE) Act	43-28-1
29.	Persons with Disabilities	43-29-1
30.	Mississippi Disability Resource Commission	43-30-1
31.	Poor Persons	43-31-1
33.	Housing and Housing Authorities	43-33-1
35.	Urban Renewal and Redevelopment	43-35-1
37.	Acquisition of Real Property Using Public Funds	43-37-1
39.	Relocation Assistance	43-39-1
41.	Emergency and Disaster Assistance [Repealed]	43-41-1
43.	Administration of Social Security Funds	43-43-1
45.	Adult Protective Services [Repealed]	43-45-1
47.	Mississippi Vulnerable Persons Act	43-47-1
49.	Mississippi Welfare Restructuring Program Act of 1993 [Repealed]	43-49-1
51.	Family Preservation Act of 1994	43-51-1
53.	Mississippi Leadership Council on Aging	43-53-1
55.	Mississippi Commission for National and Community Service	43-55-1
57.	Comprehensive Plan for Provision of Services to Disabled Persons [Repealed]	
59.	Mississippi Commission on the Status of Women	43-59-1

TITLE 43. PUBLIC WELFARE (Cont'd)

		Beginning Section
	61. Mississippi Seniors and Indigents Rx Program	43-61-1

TITLE 45. PUBLIC SAFETY AND GOOD ORDER

CHAPTER	1. Department of Public Safety	45-1-1
	2. Law Enforcement Officers and Fire Fighters Death and Disability Benefits Trust Funds	45-2-1
	3. Highway Safety Patrol	45-3-1
	4. County Jail Officers Training Program	45-4-1
	5. Law Enforcement Officers' Training Academy	45-5-1
	6. Law Enforcement Officers Training Program	45-6-1
	7. County Patrol Officers	45-7-1
	9. Weapons	45-9-1
	10. Novelty Lighters	45-10-1
	11. Fire Protection Regulations, Fire Protection and Safety in Buildings	45-11-1
	12. Mississippi Fire Safety Standard and Firefighter Protection Act [For contingent repeal of this chapter, see § 45-12-21]	45-12-1
	13. Fireworks and Explosives	45-13-1
	14. Radiation Protection Program	45-14-1
	15. High Voltage Power Lines	45-15-1
	17. Civil Emergencies	45-17-1
	18. Emergency Management Assistance Compact	45-18-1
	19. Subversive Groups and Subversive Activities	45-19-51
	21. Rock Festivals	45-21-1
	23. Boiler and Pressure Vessel Safety	45-23-1
	25. Identification Cards for Non-Drivers. [Repealed]	45-25-1
	27. Mississippi Justice Information Center	45-27-1
	29. Records	45-29-1
	31. Sex Offense Criminal History Record Information Act	45-31-1
	33. Registration of Sex Offenders	45-33-1
	35. Identification Cards	45-35-1
	37. Prevention of Youth Access to Tobacco Act	45-37-1
	39. Statewide Crime Stoppers Advisory Council	45-39-1
	41. Mississippi Silver Alert System	45-41-1
	43. William Lee Montjoy Pool Safety Act	45-43-1
	45. Mississippi Conveyance Safety Act	45-45-1
	47. DNA Data Bank	45-47-1
	49. Requirements for Operation of Amusement Rides	45-49-1

TITLE 47. PRISONS AND PRISONERS; PROBATION AND PAROLE

Beginning Section
1. County and Municipal Prisons and Prisoners .. 47-1-1
3. Removal of Prisoners 47-3-1
4. Privately Operated Correctional Facilities 47-4-1
5. Correctional System 47-5-1
7. Probation and Parole 47-7-1

TITLE 49. CONSERVATION AND ECOLOGY

CHAPTER 1. General Provisions 49-1-1
2. Department of Environmental Quality 49-2-1
3. Fisheries and Wildlife Research 49-3-1
4. Mississippi Department of Wildlife, Fisheries and Parks 49-4-1
5. Fish, Game and Bird Protection and Refuges ... 49-5-1
6. Motor Vehicle and Boat Replacement Program 49-6-1
7. Hunting and Fishing 49-7-1
8. Importation, Sale and Possession of Inherently Dangerous Wild Animals 49-8-1
9. Mussels 49-9-1
10. Wildlife Violator Compact 49-10-1
11. Private Shooting Preserves 49-11-1
13. Commercial Quail 49-13-1
15. Seafood 49-15-1
17. Pollution of Waters, Streams, and Air 49-17-1
18. Mississippi Liability of Persons Responding to Oil Spills Act 49-18-1
19. Forests and Forest Protection 49-19-1
20. Mississippi River Timberlands Control Act [Repealed] 49-20-1
21. Interstate Environmental Compact 49-21-1
23. Outdoor Advertising 49-23-1
25. Junkyards 49-25-1
26. Channel Maintenance Act 49-26-1
27. Coastal Wetlands Protection Act 49-27-1
28. Shoreline and Beach Preservation Districts 49-28-1
29. Environmental Protection Council [Repealed] .. 49-29-1
31. Mississippi Multimedia Pollution Prevention Act 49-31-1
33. Mississippi Agricultural and Forestry Activity Act 49-33-1
35. Mississippi Brownfields Voluntary Cleanup and Redevelopment; Remediation of Property on National Priorities List 49-35-1

TITLE 49. CONSERVATION AND ECOLOGY (Cont'd)

Beginning Section
37. Statewide Scientific Information Management 49-37-1

TITLE 51. WATERS, WATER RESOURCES, WATER DISTRICTS, DRAINAGE, AND FLOOD CONTROL

CHAPTER 1. Navigable Waters 51-1-1
2. Mississippi Marine Litter Act 51-2-1
3. Water Resources; Regulation and Control 51-3-1
4. Mississippi Scenic Streams Stewardship Act ... 51-4-1
5. Subsurface Waters; Well Drillers 51-5-1
7. Water Management Districts 51-7-1
8. Joint Water Management Districts 51-8-1
9. Development of Region Bordering Pearl River; Pearl River Valley Water Supply District; Metropolitan Area Water Supply Act 51-9-1
11. Pearl River Basin Development District 51-11-1
13. Tombigbee Valley Authority and Water Management District 51-13-1
15. Pat Harrison Waterway Commission and District 51-15-1
17. Big Black River Basin District 51-17-1
19. West Central Mississippi Waterway Commission [Repealed] 51-19-1
21. Lower Mississippi River Basin Development District [Repealed] 51-21-1
23. Lower Yazoo River Basin District. [Repealed] .. 51-23-1
25. Yellow Creek Watershed Authority 51-25-1
27. Tennessee-Tombigbee Waterway Compact 51-27-1
29. Drainage Districts with Local Commissioners 51-29-1
31. Drainage Districts with County Commissioners 51-31-1
33. Provisions Common to Drainage Districts and Swamp Land Districts 51-33-1
35. Flood Control 51-35-1
37. Watershed Districts 51-37-1
39. Storm Water Management Districts 51-39-1
41. Public Water Authorities 51-41-1

TITLE 53. OIL, GAS, AND OTHER MINERALS

CHAPTER 1. State Oil and Gas Board 53-1-1
3. Development, Production and Distribution of Gas and Oil 53-3-1
5. Geological and Mineral Survey 53-5-1
7. Surface Mining and Reclamation of Land 53-7-1

TITLE 53. OIL, GAS, AND OTHER MINERALS (Cont'd)

Beginning Section
9. Surface Coal Mining and Reclamation of Land 53-9-1
10. Interstate Mining Compact 53-10-1
11. Mississippi Geologic Sequestration of Carbon Dioxide Act 53-11-1

TITLE 55. PARKS AND RECREATION

CHAPTER 1. Mississippi Recreational Advisory Council [Repealed] 55-1-1
3. State Parks and Forests 55-3-1
5. Federal Parks and National Parkways 55-5-1
7. Bridge and Park Commissions 55-7-1
9. County and Municipal Facilities 55-9-1
11. Harrison County Parkway 55-11-1
13. Natchez Trace Parkway 55-13-1
15. Commemorative Parks and Monuments 55-15-1
17. International Gardens of Mississippi 55-17-1
19. Bienville Recreational District 55-19-1
21. Mississippi Zoological Park and Garden Districts 55-21-1
23. Mississippi Veterans Memorial Stadium 55-23-1
24. Mississippi Coast Coliseum Commission 55-24-1
25. Rails-to-Trails Recreational District 55-25-1

TITLE 57. PLANNING, RESEARCH AND DEVELOPMENT

CHAPTER 1. Mississippi Development Authority 57-1-1
3. Agriculture and Industry Program 57-3-1
4. Industrial Development Fund 57-4-1
5. Industrial Parks and Districts 57-5-1
7. Sale or Development of Airport Lands, or Other Lands, for Industrial Purposes 57-7-1
9. Industrial Plant Training 57-9-1
10. Small Business Assistance 57-10-1
11. Market and Industrial Studies and Research ... 57-11-1
13. Research and Development Center 57-13-1
15. Marine Resources 57-15-1
17. Forest Products Utilization Laboratory [Repealed] 57-17-1
18. Renewable Natural Resources Research Act of 1994 57-18-1
19. Food Technology Laboratory 57-19-1
21. State Chemical Laboratory 57-21-1
23. Pharmaceutical Product Development and Utilization 57-23-1

TITLE 57. PLANNING, RESEARCH AND DEVELOPMENT (Cont'd)

Beginning Section
25. Southern States Energy Compact 57-25-1
26. Tourism Project Incentive Program; Theme Parks, Entertainment Centers, Scenic Attractions, etc. 57-26-1
27. Regional Tourist Promotion Councils 57-27-1
28. Tourism Project Incentive Program; Entertainment Districts, etc. 57-28-1
29. Travel and Tourism 57-29-1
30. Family-Oriented Enterprises 57-30-1
31. County Industrial Development Authorities 57-31-1
32. Southeast Mississippi Industrial Council 57-32-1
33. Southern Growth Policies Agreement 57-33-1
34. Alabama-Mississippi Joint Economic Development Authority 57-34-1
35. Tennessee River Valley Association 57-35-1
36. Chickasaw Trail Economic Development Compact [Repealed] 57-36-1
37. Transportation Planning Council [Repealed] 57-37-1
39. Energy and Transportation Planning 57-39-1
40. Energy Infrastructure Revolving Loan Program 57-40-1
41. Financing Industrial Enterprise Projects 57-41-1
43. Railroad Revitalization 57-43-1
44. Local Governments Freight Rail Service Projects 57-44-1
45. Mississippi-Louisiana-Alabama Rapid Rail Transit Compact 57-45-1
46. Mississippi Railroad Improvements Fund 57-46-1
47. Southeast Interstate Low-Level Radioactive Waste Management Compact 57-47-1
49. Nuclear Waste Storage and Disposal 57-49-1
51. Enterprise Zones [Repealed] 57-51-1
53. Corporate Headquarters Incentive Program [Repealed] 57-53-1
54. Advanced Technology Initiative [Repealed] 57-54-1
55. Universities Research Institutes 57-55-1
56. Mississippi Technology Transfer Office 57-56-1
57. Export Trade Development 57-57-1
59. Mississippi Capital Companies [Repealed] 57-59-1
61. Mississippi Business Investment Act 57-61-1
62. Mississippi Advantage Jobs Act 57-62-1
63. Statewide Economic Development and Planning Act 57-63-1
64. Regional Economic Development 57-64-1
65. Mississippi International Trade Institute 57-65-1

TITLE 57. PLANNING, RESEARCH AND DEVELOPMENT (Cont'd)

Beginning Section

67. Mississippi Superconducting Super Collider Act 57-67-1
69. Mississippi Minority Business Enterprise Act .. 57-69-1
71. Mississippi Small Enterprise Development Finance Act 57-71-1
73. Economic Development Reform Act 57-73-1
75. Mississippi Major Economic Impact Act 57-75-1
77. Venture Capital Act of 1994 57-77-1
79. Mississippi Small Town Development Act 57-79-1
80. Growth and Prosperity Act 57-80-1
81. Mississippi Science and Technology Commission [Repealed] 57-81-1
83. Mississippi Technology, Inc. Liaison Committee 57-83-1
85. Mississippi Rural Impact Act 57-85-1
87. Mississippi Broadband Technology Development Act 57-87-1
89. Mississippi Motion Picture Incentive Act 57-89-1
91. Economic Redevelopment Act 57-91-1
93. Mississippi Existing Industry Productivity Loan Program 57-93-1
95. Mississippi Job Protection Act 57-95-1
97. Mississippi Delta Revitalization Act of 2006 57-97-1
99. Mississippi Major Economic Impact Withholding Rebate Incentive Program 57-99-1
100. Existing Industry Withholding Rebate Incentive Program 57-100-1
101. Mississippi Major Economic Impact Authority Component Construction Material Costs Rebate Program 57-101-1
103. Technology Based Business Capital Assistance Programs 57-103-1
105. Qualified Equity Investment Tax Credits and Public Entity Financing Arrangements 57-105-1
107. Mississippi Workforce Training Projects 57-107-1
111. Mississippi Small Business and Existing Forestry Industry Enterprise Participating Loan Program 57-111-1
113. Business Enterprise Tax Exemptions 57-113-1
115. Mississippi Small Business Investment Company Act 57-115-1
117. Mississippi Health Care Industry Zone Act [Repealed effective July 1, 2022] 57-117-1
119. Gulf Coast Restoration Fund 57-119-1

TITLE 57. PLANNING, RESEARCH AND DEVELOPMENT (Cont'd)

Beginning Section
121. 2020 COVID-19 Mississippi Business Assistance Act 57-121-1
123. Coronavirus Recovery Funds 57-123-1

TITLE 59. PORTS, HARBORS, LANDINGS AND WATERCRAFT

CHAPTER 1. Harbor or Port Commissions; Powers of Political Subdivision; Pilotage 59-1-1
3. Ports of Entry 59-3-1
5. State Ports and Harbors 59-5-1
6. Compact for Development of Deep Draft Harbor and Terminal 59-6-1
7. County and Municipal Harbors 59-7-1
9. County Port Authority or Development Commission 59-9-1
11. County Port and Harbor Commission 59-11-1
13. Harbor Improvements by Coast Counties 59-13-1
15. Small Craft Harbors 59-15-1
17. State Inland Ports 59-17-1
19. Landings 59-19-1
21. Boats and Other Vessels 59-21-1
23. Alcohol Boating Safety Act 59-23-1
25. Certificates of Title for Boats and Other Vessels 59-25-1

TITLE 61. AVIATION

CHAPTER 1. Transportation Commission 61-1-1
3. Airport Authorities 61-3-1
4. Mississippi Wayport Authority Act 61-4-1
5. Acquisition, Disposition and Support of Airport Facilities 61-5-1
7. Airport Zoning 61-7-1
9. Incorporation of Airport Into Corporate Boundaries of Municipality 61-9-1
11. Operation of Aircraft; Certification and Licensing of Pilots and Aircraft 61-11-1
13. Aircraft for Use of Governor, State Departments and Agencies 61-13-1
15. Registration of Aircraft 61-15-1
17. Concealing or Misrepresenting Aircraft Identification Number; Non-Conforming Aircraft Fuel Containers 61-17-1
19. Aviation Hazards 61-19-1

TITLE 63. MOTOR VEHICLES AND TRAFFIC REGULATIONS

Beginning Section
CHAPTER 1. Driver's License 63-1-1
2. Mandatory Use of Safety Seat Belts 63-2-1
3. Traffic Regulations and Rules of the Road 63-3-1
5. Size, Weight and Load 63-5-1
7. Equipment and Identification 63-7-1
9. Traffic Violations Procedure 63-9-1
10. Nonresident Traffic Violator Compact 63-10-1
11. Implied Consent Law 63-11-1
13. Inspection of Motor Vehicles 63-13-1
15. Motor Vehicle Safety — Responsibility 63-15-1
16. Public Safety Verification and Enforcement Act [Repealed effective July 1, 2022] 63-16-1
17. Manufacture, Sales and Distribution 63-17-1
19. Motor Vehicle Sales Finance Law 63-19-1
21. Motor Vehicle Titles 63-21-1
23. Abandoned Motor Vehicles 63-23-1
25. Motor Vehicle Chop Shop, Stolen and Altered Property Act 63-25-1
27. Disclosure of Use of Nonoriginal Replacement Parts 63-27-1
29. Mississippi Vehicle Protection Product Act 63-29-1
31. Operating Off-Road Vehicles 63-31-1
33. Miscellaneous Provisions 63-33-1

TITLE 65. HIGHWAYS, BRIDGES AND FERRIES

CHAPTER 1. Transportation Department 65-1-1
2. State Transportation Arbitration Board 65-2-1
3. State Highway System 65-3-1
4. Economic Development Highway Act 65-4-1
5. Controlled Access Facilities 65-5-1
7. Public Roads and Streets; Private Way 65-7-1
9. State Aid Roads in Counties 65-9-1
10. County Major Feeder Road System [Repealed] 65-10-1
11. County Highway Aid 65-11-1
13. Highway and Street Revenue Bond Authority 65-13-1
15. County Funds for Roads and Bridges 65-15-1
17. County Road Officials 65-17-1
18. Local System Road Program 65-18-1
19. Separate Road Districts 65-19-1
21. Bridges; General Provisions 65-21-1
23. Bridges; Boundary and Other Waters 65-23-1

TITLE 65. HIGHWAYS, BRIDGES AND FERRIES (Cont'd)

Beginning Section
25. Mississippi River Bridges 65-25-1
26. Tennessee-Tombigbee Waterway Bridges 65-26-1
27. Ferries; General Provisions 65-27-1
29. Ferries in Certain Counties 65-29-1
31. Hospitality Stations on Highways 65-31-1
33. Sea Walls 65-33-1
37. Local System Bridge Replacement and Rehabilitation Program 65-37-1
39. Gaming Counties Bond Sinking Fund 65-39-1
41. Mississippi Scenic Byways 65-41-1
43. Toll Roads and Toll Bridges 65-43-1

TITLE 67. ALCOHOLIC BEVERAGES

CHAPTER 1. Local Option Alcoholic Beverage Control 67-1-1
3. Sale of Light Wine, Beer, and Other Alcoholic Beverages 67-3-1
5. Native Wines 67-5-1
7. Beer Industry Fair Dealing Act 67-7-1
9. Possession or Transportation of Alcoholic Beverages, Light Wine, or Beer 67-9-1

TITLE 69. AGRICULTURE, HORTICULTURE, AND ANIMALS

CHAPTER 1. Agriculture and Commerce Department; Council on Agriculture 69-1-1
2. Mississippi Farm Reform Act 69-2-1
3. Agricultural Seeds 69-3-1
5. Fairs; Stock Shows; Improvement of Livestock 69-5-1
7. Markets and Marketing; Domestic Fish Farming 69-7-1
8. Beef Promotion And Research Program ....
9. Soybean Promotion Board 69-9-1
10. Rice Promotion Board 69-10-1
11. Swine 69-11-1
13. Stock Laws, Estrays 69-13-1
15. Board of Animal Health; Livestock and Animal Diseases 69-15-1
17. Livestock Biologics, Drugs and Vaccines 69-17-1
19. Regulation of Professional Services 69-19-1
21. Crop Spraying and Licensing of Aerial Applicators 69-21-1
23. Mississippi Pesticide Law 69-23-1
24. Fertilizing Materials and Additives 69-24-1
25. Plants, Plant and Bee Diseases 69-25-1

TITLE 69. AGRICULTURE, HORTICULTURE, AND ANIMALS (Cont'd)

		Beginning Section
26.	Pest Control Compact	69-26-1
27.	Soil Conservation	69-27-1
28.	Protection and Conservation of Agricultural Lands	69-28-1
29.	Livestock Brands, Theft or Loss of Livestock and Protective Associations	69-29-1
31.	Regulation of Moisture-Measuring Devices	69-31-1
33.	Pecan Harvesting	69-33-1
34.	Milk Producers Transportation Cost Assistance Loan Program	69-34-1
35.	Mississippi Dairy Promotion Act	69-35-1
36.	Southern Dairy Compact	69-36-1
37.	Mississippi Boll Weevil Management Act	69-37-1
39.	Agricultural Liming Materials	69-39-1
41.	Mississippi Agribusiness Council Act of 1993	69-41-1
42.	Program to Encourage Growth in Mississippi Agribusiness Industry	69-42-1
43.	Mississippi Ratite Council and Promotion Board	69-43-1
44.	Mississippi Corn Promotion Board	69-44-1
45.	Mississippi Agricultural Promotions Program Act	69-45-1
46.	Mississippi Land, Water and Timber Resources Act	69-46-1
47.	Organic Certification Program	69-47-1
48.	Peanut Promotion Board	69-48-1
49.	Field Crop Products	69-49-1
51.	Ethanol, Anhydrous Alcohol and Wet Alcohol	69-51-1
53.	Agritourism [Repealed effective July 1, 2018]	69-53-1

TITLE 71. LABOR AND INDUSTRY

Chapter	1.	Employer and Employee	71-1-1
	3.	Workers' Compensation	71-3-1
	5.	Unemployment Compensation	71-5-1
	7.	Drug and Alcohol Testing of Employees	71-7-1
	9.	Medical Savings Account Act	71-9-1
	11.	Employment Protection Act	71-11-1
	13.	Prohibition Against Employer Intimidation Act	71-13-1
	15.	Mississippi Employment Fairness Act	71-15-1

TITLE 73. PROFESSIONS AND VOCATIONS

Chapter	1.	Architects	73-1-1

TITLE 73. PROFESSIONS AND VOCATIONS (Cont'd)

		Beginning Section
2.	Landscape Architectural Practice	73-2-1
3.	Attorneys at Law	73-3-1
4.	Auctioneers	73-4-1
5.	Barbers	73-5-1
6.	Chiropractors	73-6-1
7.	Cosmetologists	73-7-1
9.	Dentists	73-9-1
10.	Dietitians	73-10-1
11.	Practice of Funeral Service and Funeral Directing	73-11-1
13.	Engineers and Land Surveyors	73-13-1
14.	Hearing Aid Dealers	73-14-1
15.	Nurses	73-15-1
17.	Nursing Home Administrators	73-17-1
19.	Optometry and Optometrists	73-19-1
21.	Pharmacists	73-21-1
22.	Orthotics and Prosthetics	73-22-1
23.	Physical Therapists	73-23-1
24.	Mississippi Occupational Therapy Practice Act	73-24-1
25.	Physicians	73-25-1
26.	Physician Assistants	73-26-1
27.	Podiatrists	73-27-1
29.	Polygraph Examiners	73-29-1
30.	Licensed Professional Counselors	73-30-1
31.	Psychologists	73-31-1
33.	Public Accountants	73-33-1
34.	Real Estate Appraisers	73-34-1
35.	Real Estate Brokers	73-35-1
36.	Registered Foresters	73-36-1
37.	Sanitarians	73-37-1
38.	Speech Pathologists and Audiologists	73-38-1
39.	Veterinarians	73-39-1
41.	Athlete Agents [Repealed]	73-41-1
42.	Uniform Athlete Agents Law	73-42-1
43.	State Board of Medical Licensure	73-43-1
45.	Information to Be Included in Prescriptions	73-45-1
47.	Occupational Board Compliance Act of 2017	73-47-1
49.	Health Care Provider Licensing Boards	73-49-1
50.	Licensing, Certifying or Registering Military-trained Individuals or Spouses to Lawfully Practice Occupation	73-50-1
51.	Unlicensed Practice of Profession	73-51-1
52.	Licensure Records	73-52-1

TITLE 73. PROFESSIONS AND VOCATIONS (Cont'd)

Beginning Section

53. Licensing and Regulation of Social Workers 73-53-1
54. Marriage and Family Therapists 73-54-1
55. Mississippi Athletic Trainers Licensure Act 73-55-1
57. Mississippi Respiratory Care Practice Act 73-57-1
59. Residential Builders and Remodelers 73-59-1
60. Home Inspectors 73-60-1
61. Tattooing and Body Piercing 73-61-1
63. Registered Professional Geologists Practice Act 73-63-1
65. Professional Art Therapists 73-65-1
67. Professional Massage Therapists 73-67-1
69. Mississippi Electronic Protection Licensing Act 73-69-1
71. Acupuncture Practice Act 73-71-1
73. Mississippi Certified Interior Designer Act 73-73-1
75. Licensed Behavior Analysts 73-75-1

TITLE 75. REGULATION OF TRADE, COMMERCE AND INVESTMENTS

CHAPTER 1. Uniform Commercial Code — Revised Article 1. General Provisions 75-1-101
2. Uniform Commercial Code — Sales 75-2-101
2A. Uniform Commercial Code — Leases 75-2A-101
3. Uniform Commercial Code — Negotiable Instruments 75-3-101
4. Uniform Commercial Code—Bank Deposits and Collections 75-4-101
4A. Uniform Commercial Code—Funds Transfers .. 75-4A-101
5. Uniform Commercial Code—Revised Article 5. Letters of Credit 75-5-101
6. Uniform Commercial Code—Bulk Transfers 75-6-101
7. Uniform Commercial Code—Documents of Title 75-7-101
8. Uniform Commercial Code—Revised Article 8. Investment Securities 75-8-101
9. Uniform Commercial Code—Secured Transactions 75-9-101
10. Uniform Commercial Code—Effective Date and Repealer 75-10-101
11. Uniform Commercial Code—Effective Date and Transition Provisions: 1977 Amendments 75-11-101
12. Uniform Electronic Transactions Act 75-12-1
13. Bills, Notes and Other Writings 75-13-1
15. Mississippi Money Transmitters Act 75-15-1
17. Interest, Finance Charges, and Other Charges 75-17-1

TITLE 75. REGULATION OF TRADE, COMMERCE AND INVESTMENTS (Cont'd)

		Beginning Section
18.	Revolving Charge Agreements; Credit Cards [Repealed]	75-18-1
19.	Seals	75-19-1
21.	Trusts and Combines in Restraint or Hindrance of Trade	75-21-1
23.	Fair Trade Laws	75-23-1
24.	Regulation of Business for Consumer Protection	75-24-1
25.	Registration of Trademarks and Labels	75-25-1
26.	Mississippi Uniform Trade Secrets Act	75-26-1
27.	Weights and Measures	75-27-1
29.	Sale and Inspection of Food and Drugs	75-29-1
31.	Milk and Milk Products	75-31-1
33.	Meat, Meat-Food and Poultry Regulation and Inspection	75-33-1
35.	Meat Inspection	75-35-1
37.	Operation of Frozen Food Locker Plants [Repealed]	75-37-1
39.	Sale of Baby Chicks	75-39-1
40.	Importation and Sale of Animals or Birds	75-40-1
41.	Gins	75-41-1
43.	Farm Warehouses	75-43-1
44.	Grain Warehouses	75-44-1
45.	Commercial Feeds and Grains	75-45-1
47.	Commercial Fertilizers	75-47-1
49.	Factory-Built Homes	75-49-1
51.	Water Heaters	75-51-1
53.	Paints, Varnishes and Similar Materials	75-53-1
55.	Gasoline and Petroleum Products	75-55-1
56.	Antifreeze and Summer Coolants	75-56-1
57.	Liquefied Petroleum Gases	75-57-1
58.	Mississippi Natural Gas Marketing Act	75-58-1
59.	Correspondence Courses	75-59-1
60.	Proprietary Schools and Colleges	75-60-1
61.	Manufacture and Sale of Jewelry and Optical Equipment	75-61-1
63.	Sales of Cemetery Merchandise and Funeral Services	75-63-1
65.	Going Out of Business Sales; Unsolicited Goods	75-65-1
66.	Home Solicitation Sales	75-66-1
67.	Loans	75-67-1
69.	Farm Loan Bonds	75-69-1
71.	Mississippi Securities Act of 2010	75-71-101

TITLE 75. REGULATION OF TRADE, COMMERCE AND INVESTMENTS (Cont'd)

Beginning Section
72. Business Takeovers 75-72-1
73. Hotels and Innkeepers 75-73-1
74. Youth Camps 75-74-1
75. Amusements, Exhibitions and Athletic Events 75-75-1
76. Mississippi Gaming Control Act 75-76-1
77. Repurchase of Inventories From Retailers Upon Termination of Contract 75-77-1
79. Pulpwood Scaling and Practices 75-79-1
81. Dance Studio Lessons 75-81-101
83. Health Spas 75-83-1
85. Transient Vendor 75-85-1
87. Contracts Between Out-of-State Principals and Commissioned Sales Representatives 75-87-1
89. Mississippi Commodities Enforcement Act 75-89-1
91. Truth in Music Advertising 75-91-1
93. Fictitious Business Name Registration Act 75-93-1
95. Business of Purchasing Precious Items for Resale 75-95-1

TITLE 77. PUBLIC UTILITIES AND CARRIERS

Chapter 1. Public Service Commission 77-1-1
2. Public Utilities Staff 77-2-1
3. Regulation of Public Utilities 77-3-1
5. Electric Power 77-5-1
6. Municipal Gas Authority of Mississippi Law 77-6-1
7. Motor Carriers 77-7-1
8. Transportation Network Companies 77-8-1
9. Railroads and Other Common Carriers 77-9-1
11. Gas Pipelines and Distribution Systems 77-11-1
13. Regulation of Excavations Near Underground Utility Facilities 77-13-1
15. Local Natural Gas Districts 77-15-1
17. Mississippi Broadband Enabling Act 77-17-1

TITLE 79. CORPORATIONS, ASSOCIATIONS, AND PARTNERSHIPS

Chapter 1. General Provisions Relative to Corporations 79-1-1
3. Business Corporations [Repealed] 79-3-1
4. Mississippi Business Corporation Act 79-4-1.01
5. Business Development Corporations [Repealed] 79-5-1
6. Foreign Limited Liability Companies [Repealed] 79-6-1

TITLE 79. CORPORATIONS, ASSOCIATIONS, AND PARTNERSHIPS (Cont'd)

Beginning Section

7. Small Business Investment Companies 79-7-1
9. Professional Corporations [Repealed] 79-9-1
10. Mississippi Professional Corporation Act 79-10-1
11. Nonprofit, Nonshare Corporations and Religious Societies 79-11-1
12. Partnerships [Repealed] 79-12-1
13. Uniform Partnership Act (1997) 79-13-101
14. Mississippi Uniform Limited Partnership Act .. 79-14-101
15. Investment Trusts 79-15-1
16. Mississippi Registration of Foreign Business Trusts Act 79-16-1
17. Agricultural Associations; Conversion to Corporate Form 79-17-1
19. Agricultural Cooperative Marketing Associations 79-19-1
21. Aquatic Products Marketing Association 79-21-1
22. Mississippi Aquaculture Act of 1988 79-22-1
23. Commercial and Proprietary Information 79-23-1
25. Mississippi Shareholder Protection Act 79-25-1
27. Mississippi Control Share Act 79-27-1
29. Revised Mississippi Limited Liability Company Act 79-29-101
31. Mississippi Registration of Foreign Limited Liability Partnerships Act [Repealed] 79-31-1
33. Corporate Successor Asbestos-Related Liability in Connection with Mergers or Consolidations 79-33-1
35. The Mississippi Registered Agents Act 79-35-1
37. Mississippi Entity Conversion and Domestication Act 79-37-101
13. Uniform Partnership Act (1997) 79-13-101

TITLE 81. BANKS AND FINANCIAL INSTITUTIONS

CHAPTER 1. Department of Banking and Consumer Finance 81-1-1
3. Incorporation and Organization of Banks 81-3-1
5. General Provisions Relating to Banks and Banking 81-5-1
7. Branch Banks 81-7-1
8. Regional Banking Institutions 81-8-1
9. Insolvent Banks 81-9-1
11. Savings and Loan Associations [Repealed] 81-11-1
12. Savings Associations Law 81-12-1

TITLE 81. BANKS AND FINANCIAL INSTITUTIONS (Cont'd)

Beginning Section
13. Credit Unions 81-13-1
14. Savings Bank Law 81-14-1
15. Mississippi Rural Credit Law 81-15-1
17. Farmers' Credit Associations 81-17-1
18. Mississippi S.A.F.E. Mortgage Act 81-18-1
19. Consumer Loan Broker Act 81-19-1
20. Consumer Complaints and Disputes Against Mortgage Companies 81-20-1
21. Insurance Premium Finance Companies 81-21-1
22. Mississippi Debt Management Services Act 81-22-1
23. Interstate Bank Branching 81-23-1
25. The Mississippi International Banking Act 81-25-1
27. Multistate, State and Limited Liability Trust Institutions 81-27-1.001
29. Lender Trade Name and Trademark Use 81-29-1

TITLE 83. INSURANCE

CHAPTER 1. Department of Insurance 83-1-1
2. Competitive Rating for Property and Casualty Insurance 83-2-1
3. Commissioner of Insurance, Rating Bureau and Rates 83-3-1
5. General Provisions Relative to Insurance and Insurance Companies 83-5-1
6. Registration and Examination of Insurers 83-6-1
7. Life Insurance 83-7-1
9. Accident, Health and Medicare Supplement Insurance 83-9-1
11. Automobile Insurance 83-11-1
13. Fire Insurance 83-13-1
14. Homeowners' and Farmowners' Insurance [Repealed] 83-14-1
15. Title Insurance 83-15-1
17. Insurance Agents, Solicitors, or Adjusters 83-17-1
18. Insurance Administrators and Managing General Agents 83-18-1
19. Domestic Companies 83-19-1
20. Domicile Change for Domestic and Foreign Insurers 83-20-1
21. Foreign Companies 83-21-1

TITLE 83. INSURANCE (Cont'd)

		Beginning Section
22.	Mississippi Uniform Disclaimer of Property Interests Act (2002/2010)'	
23.	Insolvent Insurance Companies; Insurance Guaranty Association	83-23-1
24.	Insurers Rehabilitation and Liquidation Act	83-24-1
25.	Co-operative Insurance	83-25-1
27.	Surety Companies	83-27-1
29.	Fraternal Societies	83-29-1
30.	Larger Fraternal Benefit Societies	83-30-1
31.	Mutual Companies	83-31-1
33.	Reciprocal Insurance	83-33-1
34.	Windstorm Underwriting Association	83-34-1
35.	Underwriting Association [Repealed]	83-35-1
36.	Joint Underwriting Association for Medical Malpractice Insurance	83-36-1
37.	Burial Associations	83-37-1
38.	Mississippi Residential Property Insurance Underwriting Association Law	83-38-1
39.	Bail Bonds and Bondsmen	83-39-1
41.	Hospital and Medical Service Associations and Contracts	83-41-1
43.	Nonprofit Dental Service Corporations	83-43-1
45.	Nonprofit, Community Service Blood Supply Plans	83-45-1
47.	Nonprofit Medical Liability Insurance Corporations	83-47-1
48.	Medical Malpractice Insurance Availability Act	83-48-1
49.	Legal Expense Insurance	83-49-1
51.	Dental Care Benefits	83-51-1
52.	Guaranteed Asset Protection Waivers	83-52-1
53.	Credit Life and Credit Disability Insurance	83-53-1
54.	Mississippi Creditor-Placed Insurance Act	83-54-1
55.	Risk Retention Act	83-55-1
57.	Home Warranties [Repealed].	83-57-1
58.	New Home Warranty Act	83-58-1
59.	Business Transacted With Producer Controlled Insurer Act	83-59-1
61.	Voluntary Basic Health Insurance Coverage Law	83-61-1
62.	Health Savings Accounts	83-62-1
63.	Small Employer Health Benefit Plans	83-63-1
64.	Health Discount Plans	83-64-1
65.	Regulation of Vehicle Service Contracts	83-65-101

TITLE 83. INSURANCE (Cont'd)

			Beginning Section
	67.	Utilization of Modern Systems for Holding and Transferring Securities Without Physical Delivery	83-67-1
	69.	Interstate Insurance Product Regulation Compact	83-69-1
	71.	Unfair Discrimination Against Subjects of Abuse in Health, Life, and Disability Income Insurance	83-71-1
	73.	Portable Electronics Insurance	83-73-1
	75.	Homeowners Insurance Discount for Hurricane or Windstorm Damage Mitigation	83-75-1
	77.	Health Care Sharing Ministries	83-77-1
	79.	Property Insurance Clarity Act	83-79-1
	81.	Mississippi Direct Primary Care Act	83-81-1
	83.	Limited Lines Travel Insurance Act	83-83-1
	85.	Own Risk and Solvency Assessment Act	83-85-1

TITLE 85. DEBTOR-CREDITOR RELATIONSHIP

Chapter	1.	Assignment for Benefit of Creditors	85-1-1
	3.	Exempt Property	85-3-1
	5.	Joint and Several Debtors	85-5-1
	7.	Liens	85-7-1
	8.	Uniform Federal Lien Registration Act	85-8-1
	9.	Debt Adjusting or Credit Arranging [Repealed].	85-9-1
	11.	Mississippi Uniform State Tax Lien Registration Act	85-11-1
	13.	Automated Data Match System for Identifying and Seizing Financial Assets of Obligors Identified by Department of Revenue	85-13-1

TITLE 87. CONTRACTS AND CONTRACTUAL RELATIONS

Chapter	1.	Gambling and Future Contracts	87-1-1
	3.	Power and Letters of Attorney	87-3-1
	5.	Principal and Surety	87-5-1
	7.	Improvements to Real Property	87-7-1
	9.	General Provisions	87-9-1

TITLE 89. REAL AND PERSONAL PROPERTY

Chapter	1.	Land and Conveyances	89-1-1
	2.	Liability of Recreational Landowners	89-2-1
	3.	Acknowledgments	89-3-1

TITLE 89. REAL AND PERSONAL PROPERTY (Cont'd)

Beginning Section

5. Recording of Instruments 89-5-1
6. Mississippi Plane Coordinate System 89-6-1
7. Landlord and Tenant 89-7-1
8. Residential Landlord and Tenant Act 89-8-1
9. Condominiums 89-9-1
11. Escheats 89-11-1
12. Uniform Disposition of Unclaimed Property Act 89-12-1
13. Party Fences 89-13-1
15. Party Walls 89-15-1
17. Salvage 89-17-1
19. Mississippi Conservation Easements 89-19-1
21. Uniform Disclaimer of Property Interests Act .. 89-21-1
22. Mississippi Uniform Disclaimer of Property Interests Act (2002/2010) 89-22-1
23. Mississippi Uniform Environmental Covenants Act 89-23-1
25. Mississippi Uniform Statutory Rule Against Perpetuities 89-25-1

TITLE 91. TRUSTS AND ESTATES

Chapter 1. Descent and Distribution 91-1-1
3. Uniform Simultaneous Death Law 91-3-1
5. Wills and Testaments 91-5-1
7. Executors and Administrators 91-7-1
8. Mississippi Uniform Trust Code 91-8-101
9. Trusts and Trustees 91-9-1
11. Fiduciary Security Transfers 91-11-1
13. Fiduciary Investments 91-13-1
15. Release of Powers of Appointment 91-15-1
17. Mississippi Principal and Income Act of 2013 .. 91-17-101
19. Gifts to Minors [Repealed] 91-19-1
20. Transfers to Minors 91-20-1
21. Uniform Transfer-on-Death Security Registration Act 91-21-1
23. Revised Uniform Fiduciary Access to Digital Assets Act 91-23-1
25. Mississippi Uniform Estate Tax Apportionment Act 91-25-1
27. Mississippi Real Property Transfer-On-Death Act 91-27-1
29. Effect of Dissolution of Marriage 91-29-1
31. Uniform Partition of Heir Property 91-31-1

TITLE 93. DOMESTIC RELATIONS

			Beginning Section
CHAPTER	1.	Marriage	93-1-1
	3.	Husband and Wife	93-3-1
	5.	Divorce and Alimony	93-5-1
	7.	Annulment of Marriage	93-7-1
	9.	Bastardy	93-9-1
	11.	Enforcement of Support of Dependents	93-11-1
	12.	Enforcement of Child Support Orders from Foreign Jurisdictions	93-12-1
	13.	Guardians and Conservators	93-13-1
	14.	Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act	93-14-101
	15.	Mississippi Termination of Parental Rights Law	93-15-1
	16.	Grandparents' Visitation Rights	93-16-1
	17.	Adoption, Change of Name, and Legitimation of Children	93-17-1
	19.	Removal of Disability of Minority	93-19-1
	20.	Guardianship and Conservatorship	93-20-101
	21.	Protection from Domestic Abuse	93-21-1
	22.	Uniform Interstate Enforcement of Domestic Violence Protection Orders	93-22-1
	23.	Uniform Child Custody Jurisdiction Act [Repealed]	93-23-1
	25.	Uniform Interstate Family Support Act	93-25-1
	27.	Uniform Child Custody Jurisdiction and Enforcement Act	93-27-101
	29.	Uniform Child Abduction Prevention Act	93-29-1
	31.	Supporting and Strengthening Families Act	93-31-1

TITLE 95. TORTS

CHAPTER	1.	Libel and Slander	95-1-1
	3.	Nuisances	95-3-1
	5.	Trespass	95-5-1
	7.	Liability Exemption for Donors of Food	95-7-1
	9.	Liability Exemption for Volunteers and Sports Officials	95-9-1
	11.	Liability Exemption for Equine and Livestock Activities	95-11-1
	13.	Liability Exemption for Noise Pollution by Sport-shooting Ranges	95-13-1
	15.	Liability Exemption for Report of Suspicious Activity or Behavior	95-15-1

General Outline

TITLE 97. CRIMES

Beginning Section

Chapter 1. Conspiracy, Accessories and Attempts 97-1-1
3. Crimes Against the Person 97-3-1
5. Offenses Affecting Children 97-5-1
7. Crimes Against Sovereignty or Administration of Government 97-7-1
9. Offenses Affecting Administration of Justice 97-9-1
11. Offenses Involving Public Officials 97-11-1
13. Election Crimes 97-13-1
15. Offenses Affecting Highways, Ferries and Waterways 97-15-1
17. Crimes Against Property 97-17-1
19. False Pretenses and Cheats 97-19-1
21. Forgery and Counterfeiting 97-21-1
23. Offenses Affecting Trade, Business and Professions 97-23-1
25. Offenses Affecting Railroads, Public Utilities and Carriers 97-25-1
27. Crimes Affecting Public Health 97-27-1
29. Crimes Against Public Morals and Decency 97-29-1
31. Intoxicating Beverage Offenses 97-31-1
32. Tobacco Offenses 97-32-1
33. Gambling and Lotteries 97-33-1
35. Crimes Against Public Peace and Safety 97-35-1
37. Weapons and Explosives 97-37-1
39. Dueling 97-39-1
41. Cruelty to Animals 97-41-1
43. Racketeer Influenced and Corrupt Organization Act (RICO) 97-43-1
44. Mississippi Streetgang Act 97-44-1
45. Computer Crimes and Identity Theft 97-45-1

TITLE 99. CRIMINAL PROCEDURE

Chapter 1. General Provisions; Time Limitations; Costs ... 99-1-1
3. Arrests 99-3-1
5. Bail 99-5-1
7. Indictment 99-7-1
9. Process 99-9-1
11. Jurisdiction and Venue 99-11-1
13. Insanity Proceedings 99-13-1
15. Pretrial Proceedings 99-15-1
17. Trial 99-17-1
18. Office of State Public Defender 99-18-1

TITLE 99. CRIMINAL PROCEDURE (Cont'd)

		Beginning Section
19.	Judgment, Sentence, and Execution	99-19-1
20.	Community Service Restitution	99-20-1
21.	Fugitives From Other States	99-21-1
23.	Peace Bonds	99-23-1
25.	Forms	99-25-1
27.	Proceedings for Intoxicating Beverage Offenses	99-27-1
29.	Vagrancy Proceedings	99-29-1
31.	Obscene Publications Proceedings [Repealed]	99-31-1
33.	Prosecutions Before Justice Court Judges	99-33-1
35.	Appeals	99-35-1
36.	Victim Assistance Coordinator	99-36-1
37.	Restitution to Victims of Crimes	99-37-1
38.	Crime Victim's Escrow Account Act	99-38-1
39.	Post-Conviction Proceedings	99-39-1
40.	Indigent Appeals Division	99-40-1
41.	Mississippi Crime Victims' Compensation Act	99-41-1
43.	Mississippi Crime Victims' Bill of Rights	99-43-1
45.	Statewide Automated Victim Information and Notification System	99-45-1
47.	Victim of Domestic Violence, Sexual Assault or Stalking Address Confidentiality Program	99-47-1
49.	Preservation and Accessibility of Biological Evidence	99-49-1

MISSISSIPPI CODE
1972
ANNOTATED

VOLUME TWENTY-ONE A

TITLE 97.

CRIMES

Chapter 11. Offenses Involving Public Officials. 97-11-1
Chapter 13. Election Crimes. 97-13-1
Chapter 15. Offenses Affecting Highways, Ferries and Waterways. 97-15-1
Chapter 17. Crimes Against Property. 97-17-1
Chapter 19. False Pretenses and Cheats. 97-19-1
Chapter 21. Forgery and Counterfeiting. 97-21-1
Chapter 23. Offenses Affecting Trade, Business and Professions. 97-23-1
Chapter 25. Offenses Affecting Railroads, Public Utilities and Carriers. 97-25-1
Chapter 27. Crimes Affecting Public Health. 97-27-1
Chapter 29. Crimes Against Public Morals and Decency. 97-29-1
Chapter 31. Intoxicating Beverage Offenses. 97-31-1
Chapter 32. Tobacco Offenses. 97-32-1
Chapter 33. Gambling and Lotteries. 97-33-1
Chapter 35. Crimes Against Public Peace and Safety. 97-35-1
Chapter 37. Weapons and Explosives. 97-37-1
Chapter 39. Dueling. 97-39-1
Chapter 41. Cruelty to Animals. 97-41-1
Chapter 43. Racketeer Influenced and Corrupt Organization Act (RICO). 97-43-1
Chapter 44. Mississippi Streetgang Act. 97-44-1
Chapter 45. Computer Crimes and Identity Theft. 97-45-1

CHAPTER 11.

OFFENSES INVOLVING PUBLIC OFFICIALS

Sec.
97-11-1. Alteration of records.
97-11-3. Attorney general and district attorney not to advise or defend criminals.
97-11-5 and 97-11-7. Repealed.
97-11-9. Bond; approving worthless official bond.
97-11-11. Bribery; offer, promise or gift of property to candidate, officer, agent or trustee to influence his action.
97-11-13. Bribery; penalty when officer, agent or trustee accepts bribe.
97-11-15. Circuit clerk; penalty for failure or refusal to send up certificate of appeal.

Sec.
97-11-17. Clerk refusing to give certified copy of papers.
97-11-19 and 97-11-21. Repealed.
97-11-23. Drunkenness in office.
97-11-25. Embezzlement; officers, trustees and public employees converting property to own use.
97-11-27. Embezzlement; officers and public agents failing to deliver money, records, etc. to successor.
97-11-29. Embezzlement; accounts to be kept by all public officers; false entries, false certificates, loan of public funds and fraud on the treasury.
97-11-31. Embezzlement; fraud committed in public office.
97-11-33. Extortion; collecting unauthorized fees and fees for services not actually rendered.
97-11-35. Failure to return known offenders; purposeful avoidance of knowledge of offense.
97-11-37. Failure to perform any duty.
97-11-39. Military officers; resigning to evade obedience to order prohibited.
97-11-41. Oath of office and bond; elected officials not to exercise duties before taking oath or giving bond, as required.
97-11-43. Railroad fares; government officials to pay same fare as general passengers; accepting and using free pass.
97-11-45. Tax collector and chancery clerk; failure to perform duty in respect to duplicate tax receipts.
97-11-47. Tax collector; failure to make settlement.
97-11-49. Tax collector; collecting privilege tax without issuing license.
97-11-51. Trustees of state institutions not to incur liability in excess of income.
97-11-53. Offer of inducements to influence public official's action on award of contracts or accomplishment of official acts.

§ 97-11-1. Alteration of records.

If any clerk of any court, or public officer or any other person, shall wittingly make any false entry, or erase any work or letter, or change any record belonging to any court or public office, whether in his keeping or not, he shall, on conviction thereof, be imprisoned in the penitentiary for a term not exceeding ten years, and be liable to the action of the party aggrieved.

HISTORY: Codes, 1857, ch. 64, art. 10; 1871, § 2489; 1880, § 2703; 1892, § 959; 1906, § 1035; Hemingway's 1917, § 760; 1930, § 778; 1942, § 2004.

Cross References — Duty of clerk of chancery court to keep minutes, see § 9-5-135.

Circuit court dockets, see §§ 9-7-171 et seq.

Penalty for alteration or destruction of public records in a manner not authorized by records control schedule, see § 25-59-23.

Alteration of legislative bills or resolutions, see §§ 97-7-49, 97-7-51.

Alteration, destruction, or secretion of will, see § 97-9-77.

JUDICIAL DECISIONS

1. In general.

Judge violated the statute because he committed willful misconduct by interfering with an arrest warrant that another judge had issued, and the judge was also a party in that matter; the judge's willful misconduct prejudiced the administration of justice and brought the judicial office into disrepute. Miss. Comm'n on Judicial Performance v. Burton, 268 So. 3d 565, 2019 Miss. LEXIS 178 (Miss. 2019).

Recommended sanction of a public reprimand and a $ 500 fine by the Mississippi Commission on Judicial Performance was supported because a judge's misconduct resulted in a warrant not being issued, and the judge meddled in a case involving his own interests and gave an order he should not have given, but it was his first disciplinary matter; because the judge acted in an official capacity in a case in which he was a party and had a conflicting interest, he acted improperly. Miss. Comm'n on Judicial Performance v. Burton, 268 So. 3d 565, 2019 Miss. LEXIS 178 (Miss. 2019).

"Wittingly," as used in this statute, relates to the will or understanding, and means "knowingly" or "designedly." Harrington v. State, 54 Miss. 490, 1877 Miss. LEXIS 32 (Miss. 1877).

An indictment must charge that the alteration was "wittingly" done; and if it fail to do so, but simply aver that it was done "willingly", it is fatally defective; and the indictment must aver that the alteration was made with the intent to injure or benefit someone. Harrington v. State, 54 Miss. 490, 1877 Miss. LEXIS 32 (Miss. 1877).

Though, as a general rule, it be sufficient to charge a statutory offense in the words of the statute, yet this rule does not apply where there are, in the language of the statute, no sufficient words to define any offense. Jesse v. State, 28 Miss. 100, 1854 Miss. LEXIS 154 (Miss. 1854); Sarah v. State, 28 Miss. 267, 1854 Miss. LEXIS 172 (Miss. 1854); Harrington v. State, 54 Miss. 490, 1877 Miss. LEXIS 32 (Miss. 1877); Finch v. State, 64 Miss. 461, 1 So. 630, 1886 Miss. LEXIS 89 (Miss. 1886).

Judge was publicly reprimanded because he had ex parte contact with defendant that he did not disclose to the prosecutor, dismissed defendant's tickets without a hearing or notice to the prosecutor, and falsified court records by writing on the file that the ticketing officers were absent when defendant's case was called for trial, when in fact they had been present in the courtroom. Miss. Comm'n on Judicial Performance v. Carver, 107 So. 3d 964, 2013 Miss. LEXIS 55 (Miss. 2013).

RESEARCH REFERENCES

CJS.
76 C.J.S., Records §§ 26 et seq.

§ 97-11-3. Attorney general and district attorney not to advise or defend criminals.

If the attorney general or any district attorney shall, in any manner, consult, advise, counsel, or defend, within this state, a person charged with a crime or misdemeanor or the breach of a penal statute, he shall, on conviction, be fined in a sum not exceeding five hundred dollars, be removed from office, and rendered incapable thereafter of filling any office of profit or honor in this state.

HISTORY: Codes, Hutchinson's 1848, ch. 21, art. 3(6); 1857, ch. 64, art. 69; 1871, § 2714; 1880, § 2758; 1892, § 1227; 1906, § 1303; Hemingway's 1917, § 1036; 1930, § 1067; 1942, § 2299.

Cross References — Election, term of office, and qualifications of attorney general, see § 7-5-1.

Attorney general's representation of state and state officers in suits, see § 7-5-39.

Criminal prosecutions by district attorneys in circuit court, see § 25-31-11.

Prohibition against partner of county attorney defending certain criminal cases, see

§ 73-3-49.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. Disqualification of district attorney.

Trial court did not err by appointing the attorney general as special prosecutor in defendant's case because it articulated its reasons for disqualifying the district attorney, the charges against him for allegedly violating this section by improperly consulting, advising, counseling and defending defendant, the record reflected no evidence that defendant ever objected to the attorney general's appointment, and the trial court found not merit to the district attorney's objection based on a conflict of interest. Butler v. State, 292 So. 3d 251, 2019 Miss. App. LEXIS 460 (Miss. Ct. App. 2019), cert. denied, 290 So. 3d 753, 2020 Miss. LEXIS 102 (Miss. 2020), cert. denied, — So. 3d —, 2020 Miss. LEXIS 174 (Miss. 2020).

OPINIONS OF THE ATTORNEY GENERAL

A special prosecutor appointed pursuant to court order may represent criminal defendants in counties outside the circuit court district in which he is specially appointed. Peters, October 9, 1998, A.G. Op. #98-0618.

§§ 97-11-5 and 97-11-7. Repealed.

Repealed by Laws, 1983, ch. 469, § 10, eff from and after July 1, 1983.

§ 97-11-5. [Codes, 1880, § 2184; 1892, § 1235; 1906, § 1311; Hemingway's 1917, § 1044; 1930, § 1076; 1942, § 2309]

§ 97-11-7. [Codes, 1880, § 1825; 1892, § 1239; 1906, § 1315; Hemingway's 1917, § 1048; 1930, § 1080; 1942, § 2313]

Editor's Notes — Former § 97-11-5 was entitled: Board of supervisors; member receiving unlawful compensation.

Former § 97-11-7 was entitled: Board of supervisors; member or clerk must pay full value for county warrants, etc.

§ 97-11-9. Bond; approving worthless official bond.

If any officer shall approve any official bond, knowing or having good reason to believe the sureties to be insufficient, he shall, upon conviction, be punished by fine or imprisonment, or both, the fine not to exceed five hundred dollars, and the imprisonment not to exceed six months in the county jail.

HISTORY: Codes, 1880, § 406; 1892, § 1234; 1906, § 1310; Hemingway's 1917, § 1043; 1930, § 1075; 1942, § 2308.

Cross References — Bonds required of state officials, see § 25-1-13.

§ 97-11-11. Bribery; offer, promise or gift of property to candidate, officer, agent or trustee to influence his action.

Every person who shall promise, offer or give to any officer, agent or trustee, either public or private, while holding such office, agency or trust, or after he has become a candidate or applicant for the same, any money, goods, chattels, right in action, or other property, real or personal, with intent to influence his vote, opinion, action or judgment on any question, matter, cause or proceeding which may be then pending, or may be thereafter subject to vote, opinion, action or judgment of such officer, agent or trustee, shall, on conviction, be imprisoned in the penitentiary not more than ten (10) years, or fined not more than Five Thousand Dollars ($5,000.00), or both, and shall be forever disqualified from holding any public office, trust or appointment, and shall forfeit his office, if any be held.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 5(9); 1857, ch. 64, art. 34; 1871, § 2511; 1880, § 2727; 1892 § 981; 1906, § 1057; Hemingway's 1917, § 785; 1930, § 801; 1942, § 2027; Laws, 1995, ch. 463, § 1, eff from and after July 1, 1995.

Cross References — Bribery as disqualification to hold office of profit or trust, see Miss Const Art. 4, § 44.

White-collar crime investigation, see § 7-5-59.

Bribery offenses in connection with medicaid benefits, see § 43-13-207.

Unlawful gifts to members and employees of alcoholic beverage control division, see § 67-1-33.

Disqualification of persons convicted of certain crimes to hold office in labor organizations, etc., see § 71-1-49.

Influence of meat-hygiene agent, see § 75-33-25.

Bribery of meat inspection officers, see § 75-35-29.

Unlawful gifts to public service commission members, see § 77-1-11.

Prohibition of insurance rebates, see § 83-3-121.

Bribery and influence of legislative power, see §§ 97-7-53 et seq.

Acceptance by officer, agent or trustee of offer, promise or gift of property in violation of this section, see § 97-11-13.

Punishment for offer or acceptance of inducements to influence award of public contracts, see § 97-11-53.

Proof in trial for bribery, see § 99-17-21.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Indictment.

1. In general.

Because the State was not required to prove that the money given to a chief of police constituted bribe money, a reasonable jury could have concluded beyond a reasonable doubt that defendant offered to pay money to the chief of police in an attempt to influence the chief's actions and as such bribed a public official in violation of Miss. Code Ann. § 97-11-11. The evidence include testimony that after a burglary at juke joint, which was owned by defendant's brother and had illegal gaming machines, defendant told the chief that he would give him money if the chief warned defendant and his brother when the Mississippi Gaming Commission was coming; that the chief warned defendant; and that the chief later received money. Patton v. State, 987 So. 2d 1063, 2008 Miss. App. LEXIS 432 (Miss. Ct. App. 2008).

Because an attorney entered a valid plea of guilty to charges of bribery under Miss. Code Ann. § 97-11-11, pursuant to the requirements of Miss. R. Disc. St. B. 6, the attorney demonstrated evidence of unprofessional and unethical conduct evincing unfitness for the practice of law, which warranted immediate suspension, and while the plea might later be withdrawn, the court found that this provided the attorney no relief from the application of Rule 6; furthermore, the court had the power to render immediate sanctions for admitted felonies under the non-adjudication of guilt statutory procedure of Miss. Code Ann. § 99-15-26 and Miss. R. Disc. St. B. 6 without a hearing by a complaint tribunal. Miss. Bar v. Shelton, 890 So. 2d 827, 2003 Miss. LEXIS 448 (Miss. 2003), limited, Miss. Bar v. Cofer, 904 So. 2d 97, 2004 Miss. LEXIS 1032 (Miss. 2004).

Before a defendant can raise the defense of entrapment, he is required to show evidence of government inducement to commit the criminal act and a lack of predisposition to engage in the criminal act prior to contact with government agents; it is now possible for the defendant to deny one or more of the elements of the crime and still be entitled to an entrapment instruction. Hopson v. State, 625 So. 2d 395, 1993 Miss. LEXIS 422 (Miss. 1993).

Conduct of attorney in scheme to bribe state official is unlawful under state statute proscribing offers of inducements to influence public officials' actions in accomplishment of official acts. Mississippi State Bar v. Young, 509 So. 2d 210, 1987 Miss. LEXIS 2600 (Miss. 1987).

Defendant is estopped from denying his criminal intent to commit bribery because at trial he invoked entrapment defense, and by invoking that defense it was necessarily assumed that act charged as offense was committed. Howard v. State, 507 So. 2d 58, 1987 Miss. LEXIS 2443 (Miss. 1987).

To constitute a violation of this section [Code 1942, § 2027] it is not necessary that the bribery should be completed, or that there be a mutual intent on the part of the offerer and the person to whom the offer is made, or that there should have been an actual tender of the bribe. McLemore v. State, 241 Miss. 664, 125 So. 2d 86, 1960 Miss. LEXIS 365 (Miss. 1960).

The offense may be committed by making an offer communicated through an intermediary. McLemore v. State, 241 Miss. 664, 125 So. 2d 86, 1960 Miss. LEXIS 365 (Miss. 1960).

The matter with respect to which it is sought to influence a district attorney may be a charge which he is to present to a grand jury. McLemore v. State, 241 Miss. 664, 125 So. 2d 86, 1960 Miss. LEXIS 365 (Miss. 1960).

2. Indictment.

An indictment need not aver that the offer was made corruptly or with a corrupt intent. McLemore v. State, 241 Miss. 664, 125 So. 2d 86, 1960 Miss. LEXIS 365 (Miss. 1960).

RESEARCH REFERENCES

ALR.

Admissibility, in prosecution for bribery or accepting bribes, of evidence tending to show the commission of other bribery or acceptance of bribe. 20 A.L.R.2d 1012.

Solicitation or receipt of funds by public officer or employee for political campaign expenses or similar purposes as bribery. 55 A.L.R.2d 1137.

Recovery of money paid, or property transferred, as a bribe. 60 A.L.R.2d 1273.

Entrapment to commit bribery or offer to bribe. 69 A.L.R.2d 1397.

Criminal liability of corporation for bribery or conspiracy to bribe public official. 52 A.L.R.3d 1274.

Furnishing public official with meals, lodging, or travel, or receipt of such benefits, as bribery. 67 A.L.R.3d 1231.

Criminal offense of bribery as affected by lack of authority of state public officer or employee. 73 A.L.R.3d 374.

Validity of state statute prohibiting award of government contract to person or business entity previously convicted of bribery or attempting to bribe state public employee. 7 A.L.R.4th 1202.

Venue in bribery cases where crime is committed partly in one county and partly in another. 11 A.L.R.4th 704.

Am. Jur.

12 Am. Jur. 2d, Bribery §§ 1 et seq.

37 Am. Jur. Trials 273, Handling the Defense in a Bribery Prosecution.

CJS.

11 C.J.S., Bribery §§ 1 et seq.

§ 97-11-13. Bribery; penalty when officer, agent or trustee accepts bribe.

If any officer, agent or trustee shall accept any gift, offer or promise, prohibited by Section 97-11-11, he shall, on conviction, be forever disqualified from holding any public office, trust or appointment, and shall forfeit his office, if any be held, and be imprisoned in the penitentiary not more than ten (10) years, or be fined not more than Five Thousand Dollars ($5,000.00), or both.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 5(10); 1857, ch. 64, art. 35; 1871, § 2512; 1880, § 2728; 1892, § 982; 1906, § 1058; Hemingway's 1917, § 786; 1930, § 802; 1942, § 2028; Laws, 1995, ch. 463, § 2, eff from and after July 1, 1995.

Cross References — Bribery as disqualification to hold office of profit or trust, see Miss Const Art. 4, § 44.

White-collar crime investigation, see § 7-5-59.

Removal of corrupt public officers, see § 25-5-1.

Bribery offenses in connection with medicaid benefits, see § 43-13-207.

Member of legislature accepting or agreeing to accept bribes, see § 97-7-55.

Offer or acceptance of inducements to influence award of public contract, see § 97-11-53.

Bribery within Mississippi Transportation Commission, see § 97-15-3.

RESEARCH REFERENCES

ALR.

Solicitation or receipt of funds by public officer or employee for political campaign expenses or similar purposes as bribery. 55 A.L.R.2d 1137.

Recovery of money paid, or property transferred, as a bribe. 60 A.L.R.2d 1273.

Criminal offense of bribery as affected by lack of authority of state public officer or employee. 73 A.L.R.3d 374.

Am. Jur.

12 Am. Jur. 2d, Bribery §§ 1 et seq.

37 Am. Jur. Trials 273, Handling the Defense in a Bribery Prosecution.

CJS.

11 C.J.S., Bribery §§ 1 et seq.

§ 97-11-15. Circuit clerk; penalty for failure or refusal to send up certificate of appeal.

Any clerk of a circuit court who shall wilfully or negligently fail or refuse to send up the certificate of appeal, as provided in Section 99-35-121, Mississippi Code of 1972, within the time required, shall be guilty of a misdemeanor and upon conviction therefor shall be punished by a fine of not more than two hundred dollars ($200.00), or by imprisonment in the county jail for not more than three months, or both.

HISTORY: Codes, Hemingway's 1921 Supp. § 50a; 1930, § 49; 1942, § 1183; Laws, 1920, ch. 147.

Editor's Notes — Section 99-35-121, which related to the duty of the circuit clerk to certify appeals and provided the form of the certificate of appeal and is referred to in this section, was repealed by Laws of 1991, ch. 573, § 141, effective from and after July 1, 1991.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 97-11-17. Clerk refusing to give certified copy of papers.

If any clerk shall neglect or refuse to make out and deliver within a reasonable time to the person having demanded and paid in advance the statutory charge for a certified copy of any paper, record, judgment, decree or entry on file, which is lodged or remaining in his office, such clerk shall be guilty of a misdemeanor in office.

HISTORY: Codes, 1880, § 2395; 1892, § 1232; 1906, § 1308; Hemingway's 1917, § 1041; 1930, § 1073; 1942, § 2306; Laws, 1971, ch. 487, § 1, eff from and after passage (approved March 31, 1971).

Cross References — Withdrawal of court exhibits, see § 9-13-29.

Furnishing copies of books, papers, or documents, see § 11-1-51.

JUDICIAL DECISIONS

1. In general.

This section was not applicable to an indigent state prisoner seeking a writ of mandamus from a federal district court directing a state court to provide the prisoner with certified copies of all records and papers pertaining to his trial where the prisoner had failed to perfect an appeal. Ladd v. Mississippi, 434 F. Supp. 11, 1977 U.S. Dist. LEXIS 16736 (N.D. Miss. 1977).

RESEARCH REFERENCES

Am. Jur.

63C Am. Jur. 2d, Public Officers and Employees §§ 369 et seq.

CJS.

67 C.J.S., Officers and Public Employees §§ 249-251.

§§ 97-11-19 and 97-11-21. Repealed.

Repealed by Laws, 1983, ch. 469, § 10, eff from and after July 1, 1983.

§ 97-11-19. [Codes, 1892, § 1229; 1906, § 1305; Hemingway's 1917, § 1038; 1930, §§ 1069, 1070; 1942, §§ 2301, 2302; Laws, 1922, ch. 230; Laws, 1924, ch. 238; Laws, 1934, ch. 293; Laws, 1975, ch. 388]

§ 97-11-21. [Codes, 1880, § 2759; 1892, § 1228; 1906, § 1304; Hemingway's 1917, § 1037; 1930, § 1068; 1942, § 2300.]

Editor's Notes — Former § 97-11-19 was entitled: Contracts; officers, etc. not to have interest in government contracts; civil proceeding authorized.

Former § 97-11-21 was entitled: County officers or deputies not to buy claims against the county or certificates issued witnesses.

§ 97-11-23. Drunkenness in office.

Any officer who shall be guilty of habitual drunkenness, or who shall be drunk while in the actual discharge of the duties of his office, or when called on to perform them, may be indicted therefor, and, upon conviction, shall be removed from office.

HISTORY: Codes, 1880, § 424; 1892, § 1233; 1906, § 1309; Hemingway's 1917, § 1042; 1930, § 1074; 1942, § 2307.

Cross References — Intoxicated juror, see § 13-5-83.
Removals from office, see §§ 25-5-1 et seq.

JUDICIAL DECISIONS

1. In general.

Indictment must set out the particular duty which the officer is called upon to perform, and an indictment in the words of the statute is insufficient. Pruitt v. State, 116 Miss. 33, 76 So. 761, 1917 Miss. LEXIS 290 (Miss. 1917).

If the term of office expire pending the prosecution, the indictment must be dismissed. Stubbs v. State, 53 Miss. 437, 1876 Miss. LEXIS 93 (Miss. 1876).

The indictment must charge that the accused was at the time the lawful incumbent of a specific office. Shanks v. State, 51 Miss. 464, 1875 Miss. LEXIS 65 (Miss. 1875).

RESEARCH REFERENCES

Am. Jur.

63C Am. Jur. 2d, Public Officers and Employees §§ 369 et seq.

CJS.

67 C.J.S., Officers and Public Employee §§ 116-119.

§ 97-11-25. Embezzlement; officers, trustees and public employees converting property to own use.

If any state officer or any county officer, or an officer in any district or subdivision of a county, or an officer of any city, town or village, or a notary public, or any other person holding any public office or employment, or any executor, administrator or guardian, or any trustee of an express trust, any master or commissioner or receiver, or any attorney at law or solicitor, or any bank or collecting agent, or other person engaged in like public employment, or any other person undertaking to act for others and intrusted by them with business of any kind, or with money, shall unlawfully convert to his own use any money or other valuable thing which comes to his hands or possession by virtue of his office or employment, or shall not, when lawfully required to turn over such money or deliver such thing, immediately do so according to his legal obligation, he shall, on conviction, be committed to the department of corrections for not more than twenty (20) years, or be fined not more than five thousand dollars ($5,000.00).

HISTORY: Codes, 1880, § 2787; 1892, § 1063; 1906, § 1141; Hemingway's 1917, § 869; 1930, § 894; 1942, § 2120; Laws, 1979, ch. 508, § 13, eff from and after November 15, 1979 (the United States Attorney General interposed no objection to this amendment on July 6, 1979).

Editor's Notes — Laws of 1979, ch. 508, § 19, provides:

"SECTION 19. This act shall take effect and be in force as follows:

(a) Section 18 shall be effective from and after its passage.

(b) Sections 1 through 17 of this act shall be effective from and after November 15, 1979, if effectuated under the provisions of the Voting Rights Act of 1965, as amended and extended.

(c) Sections 1 through 12 of this act shall stand repealed from and after February 1, 1983."

By letter dated July 6, 1979, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the provisions of Chapter 508, Laws of 1979.

Cross References — Disqualification to hold office of one liable for public moneys unaccounted for, see Miss Const Art. 4, § 43.

White-collar crime investigations, see § 7-5-59.

Suit on state treasurer's bond for embezzlement, see § 7-9-51.

Failure of constable or other officer to pay money received from execution, see § 19-19-11.

Failure of sheriff to pay over money collected and omission to execute process, see § 19-25-45.

Duties and liabilities as to public funds, see §§ 25-1-67 et seq.

Removal of public officers for peculation, see § 25-5-1.

Application of this section to one converting to his personal use any sample or specimen textbook and additional penalty therefor, see § 37-43-59.

Additional penalties on certain officers using public moneys for gambling, see § 97-33-3.

Description of property in indictment for embezzlement, see § 99-7-31.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Indictment.
3. Evidence.
4. Restitution.

1. In general.

Earlier case is overruled inasmusch as the distinction drawn by the majority was an unnecessary one, and one which has made the embezzlement statute, for all practical purposes, a dead letter. Gerrard v. State, 619 So. 2d 212, 1993 Miss. LEXIS 220 (Miss. 1993).

If a state official uses a power given to him by law to obtain monies wrongfully, it is the corruption of power that causes those monies to be obtained "by virtue of office" since the state official would never have had the means to misallocate funds had he not held an office which conferred that power upon him. Gerrard v. State, 619 So. 2d 212, 1993 Miss. LEXIS 220 (Miss. 1993).

In Mississippi, embezzlement is wrongful conversion of property lawfully possessed by person charged, and where defendant lawfully came into possession of money orders/guilty pleas by "virtue of his office" and converted such to his own use, he could be charged with and convicted of embezzlement. Argument that money came into possession of defendant by "color of office" and not by "virtue of his office" so that any breach of trust occurred only between defendant and makers of money orders, and not between defendant and state and county, was unsound where funds converted represented payment of fines, and defendant was justice court judge. Lambert v. State, 518 So. 2d 621, 1987 Miss. LEXIS 2954 (Miss. 1987).

County tax collector's guilty plea in state court to crimes of "willful neglect of duties" and "embezzlement" (§§ 97-11-25 through 97-11-31 and § 97-11-37) established that he committed active or deliberate dishonesty or fraud, which prevented tax collector from recovering on county's fidelity insurance policy, where policy did not cover losses due to "active or deliberate dishonesty or fraud", such that insurance company owed tax collector no funds that county could obtain by garnishment. State v. Richardson, 817 F.2d 1203, 1987 U.S. App. LEXIS 6847 (5th Cir. Miss. 1987).

A particular statute, § 9-11-19, concerning the duties of a justice to account for fines and making its violation a misdemeanor, does not control the general statute, this section, concerning unlawful conversion of public funds by a state officer and making its violation a felony, since there are substantive differences between the two, violation of the method of performing a duty on the one hand as opposed to unlawful conversion of public funds on the other. Hannah v. State, 336 So. 2d 1317, 1976 Miss. LEXIS 1565 (Miss. 1976), cert. denied, 429 U.S. 1101, 97 S. Ct. 1125, 51 L. Ed. 2d 551, 1977 U.S. LEXIS 765 (U.S. 1977).

The phrase, "by virtue of his office," as appearing in Code 1942 § 2120 [Code 1972 § 97-11-25], means that the official charged with embezzlement has the legal right to receive the property or money he is accused of embezzling. Interior Contractors, Inc. v. Western Waterproofing Co., 233 So. 2d 829, 1970 Miss. LEXIS 1687 (Miss. 1970).

Under Code 1942 § 2120 [Code 1972 § 97-11-25], an official is not guilty of embezzlement where the money or property which he is accused of embezzling is received under the color of his office. Interior Contractors, Inc. v. Western Waterproofing Co., 233 So. 2d 829, 1970 Miss. LEXIS 1687 (Miss. 1970).

Single member may embezzle property coming into possession of board. State v. Yeates, 140 Miss. 224, 105 So. 498, 1925 Miss. LEXIS 253 (Miss. 1925).

Property bought for road purpose is in possession of county board of supervisors. State v. Yeates, 140 Miss. 224, 105 So. 498, 1925 Miss. LEXIS 253 (Miss. 1925).

Embezzlement is a statutory and not a common-law crime. McInnis v. State, 97 Miss. 280, 52 So. 634, 1910 Miss. LEXIS 258 (Miss. 1910).

This section [Code 1942, § 2120] creates but one offense of misappropriating funds and a tax collector convicted of embezzlement of funds may not be prosecuted for converting such funds to his own use. McInnis v. State, 97 Miss. 280, 52 So. 634, 1910 Miss. LEXIS 258 (Miss. 1910).

The section [Code 1942, § 2120] does not apply to a refusal by an executor to pay a debt due from the estate on its reduction to judgment. State v. Pannell, 34 So. 388 (Miss. 1903).

This section [Code 1942, § 2120] is prospective only, and therefore constitutional. State v. Gillis, 75 Miss. 331, 24 So. 25, 1897 Miss. LEXIS 149 (Miss. 1897).

Where the conversion to one's use, and failure to pay over, conjointly, constitute the crime under the old law (§ 2787 of the Code of 1880), and by the new law (§ 1063 of the Code of 1892), the conversion is one crime and the failure to pay over another, and the conversion is before the Code of 1892 became operative, and the failure to pay over occurred afterwards, the case is not within the saving of § 5 of the Code of 1892, that section relating only to completed offenses. State v. Gillis, 75 Miss. 331, 24 So. 25, 1897 Miss. LEXIS 149 (Miss. 1897).

If in such a case the indictment charges the defendant with having the money after the new law became operative, and with the failure to pay over thereafter, it is good, although the money was received before. The new law is not ex post facto as applied to a case where the money was in defendant's possession after the new law became operative, and he thereafter failed to pay it over. State v. Gillis, 75 Miss. 331, 24 So. 25, 1897 Miss. LEXIS 149 (Miss. 1897).

2. Indictment.

Since a bond received by a justice of the peace would be received under color of his office rather than by virtue of his office, an indictment charging the officer with embezzlement of the bond would be defective under Code 1942 § 2120 [Code 1972 § 97-11-25]. Barlow v. State, 233 So. 2d 829, 1970 Miss. LEXIS 1688 (Miss. 1970).

Indictment charging embezzlement by schoolteacher of money belonging to trustees of school without charging names of the trustees or alleging that their names were unknown, is defective. Voss v. State, 208 Miss. 303, 44 So. 2d 402, 1950 Miss. LEXIS 249 (Miss. 1950).

Under an indictment for failing to account for and pay over to his superior certain license fees collected by one designated as chief clerk, it is material as to who actually made away with the money where numerous field men had equal access to the cigar box in which duplicate permits, cash and checks were kept, and where neither statute nor departmental regulations prescribed the duties or modus operandi of the chief clerk. Murphree v. State, 201 Miss. 34, 28 So. 2d 238, 1946 Miss. LEXIS 355 (Miss. 1946).

Indictment for embezzlement not required to charge that conversion of public funds was made with intent to cheat and defraud. Sanders v. State, 141 Miss. 289, 105 So. 523, 1925 Miss. LEXIS 188 (Miss. 1925).

Indictment for embezzlement of public funds need not set out extrinsic facts constituting offense. Sanders v. State, 141 Miss. 289, 105 So. 523, 1925 Miss. LEXIS 188 (Miss. 1925).

Indictment charging accused had possession, by virtue of office, of money to an amount named in the indictment, property of the county, was sufficient without setting out the particular funds embezzled. Sanders v. State, 141 Miss. 289, 105 So. 523, 1925 Miss. LEXIS 188 (Miss. 1925).

Failure to charge that conversion of funds involved was done with intent to cheat and defraud held not error. Sanders v. State, 141 Miss. 289, 105 So. 523, 1925 Miss. LEXIS 188 (Miss. 1925).

Embezzlement held sufficiently charged against member of board of supervisors. State v. Yeates, 140 Miss. 224, 105 So. 498, 1925 Miss. LEXIS 253 (Miss. 1925).

Indictment against member of county board of supervisors not bad in describing him as supervisor. State v. Yeates, 140 Miss. 224, 105 So. 498, 1925 Miss. LEXIS 253 (Miss. 1925).

Indictment for embezzlement by chancery clerk held not subject to demurrer. State v. Murphy, 124 Miss. 440, 86 So. 868, 1920 Miss. LEXIS 528 (Miss. 1920).

Conflicting averments do not establish fiduciary relationship to county where such does not exist in fact. State v. Jones, 102 Miss. 89, 58 So. 782, 1912 Miss. LEXIS 34 (Miss. 1912).

3. Evidence.

Because the defense presented uncontradicted testimony that defendant had permission from the organization's board to add his wife to the cell phone plan, as well as testimony that defendant did reimburse the organization for his wife's cell phone charges, and the State cited no legal authority for its claim that the board's consent was void, the evidence was insufficient to convict defendant of embezzlement. Allen v. State, — So. 3d —, 2019 Miss. App. LEXIS 44 (Miss. Ct. App. Jan. 29, 2019).

Evidence was sufficient to show that defendant converted the guardianship funds to his own use where it showed he deposited some guardianship funds into his escrow account and never moved them to a guardianship account, he orchestrated and facilitated the entire loan transaction using guardianship funds, and he failed to seek court-approval as required. Brown v. State, 178 So. 3d 1234, 2015 Miss. LEXIS 558 (Miss. 2015).

Evidence was sufficient to show that defendant used guardianship funds to make loans in violation of this section where it showed that he possessed, controlled, and used guardianship funds for his own purposes and included chancery court accountings in which defendant himself represented that the loans came from guardianship funds. Brown v. State, 178 So. 3d 1234, 2015 Miss. LEXIS 558 (Miss. 2015).

There was sufficient evidence to support a conviction for embezzlement under Miss. Code Ann. § 97-11-25 because defendant, as a mayor of a town, did not have permission to take cabinets inside of a city building, and the evidence showed that the cabinets in question were city property instead of the property of a former tenant; a mistake of fact defense was rejected because the evidence showed that defendant was put on notice that the cabinets were city property. Logan v. State, 951 So. 2d 630, 2007 Miss. App. LEXIS 142 (Miss. Ct. App. 2007).

Lower court did not err when it allowed state to cross-examine defendant about prior improper actions concerning "ticket fixing", despite allegation that such cross-examination amounted to questioning that was meant solely to bring out acts of misconduct reflecting on defendant's character and prejudice jury, where defendant had asserted throughout trial that state troopers had requested that citations in question be dismissed and numerous witnesses, including defendant, testified at various times concerning manner in which traffic citations could be dismissed. Lambert v. State, 518 So. 2d 621, 1987 Miss. LEXIS 2954 (Miss. 1987).

In a prosecution of a justice of the peace under this section evidence was sufficient to support the verdict of guilty where there were numerous incidents in which the defendant had received a certain amount in payment of a fine and had remitted a lesser amount to the county. Hannah v. State, 336 So. 2d 1317, 1976 Miss. LEXIS 1565 (Miss. 1976), cert. denied, 429 U.S. 1101, 97 S. Ct. 1125, 51 L. Ed. 2d 551, 1977 U.S. LEXIS 765 (U.S. 1977).

In a prosecution for embezzlement where defendant converted accounts due to another to his own use, testimony of a witness who had never been in the office and who knew no one who worked in the office and who had never seen the defendant until the day of trial that he had made phone calls to defendant's office and had been told that money had been collected was not admissible in evidence. Acosta v. State, 222 Miss. 426, 76 So. 2d 211, 1954 Miss. LEXIS 661 (Miss. 1954).

4. Restitution.

Trial court erred by ordering defendant to pay $1.2 million in restitution under Miss. Code Ann. § 99-37-3 because no proof was offered that any more than the $550,000 in pecuniary damages resulted from the embezzlement; the $1.2 million reflected money used for cars, cash, and other expenditures that did not result from the embezzlement of $550,000. Brown v. State, 178 So. 3d 1234, 2015 Miss. LEXIS 558 (Miss. 2015).

RESEARCH REFERENCES

ALR.

Imposition of constructive trust in property bought with stolen or embezzled funds. 38 A.L.R.3d 1354.

Liability of bank or safe-deposit company for its employee's theft or misappropriation of contents of safe-deposit box. 39 A.L.R.4th 543.

Am. Jur.

26 Am. Jur. 2d, Embezzlement §§ 33 et seq.

7 Am. Jur. Pl & Pr Forms (Rev), Conversion, Form 73.6 (Complaint, petition, or declaration–For conversion–By employer against employee and spouse).

2 Am. Jur. Trials, Investigating Particular Crimes § 22 (embezzlement).

CJS.

29A C.J.S., Embezzlement §§ 15 et seq.

Law Reviews.

1989 Mississippi Supreme Court Review: Statutory Interpretation. 59 Miss. L. J. 876, Winter, 1989.

§ 97-11-27. Embezzlement; officers and public agents failing to deliver money, records, etc. to successor.

If any officer or agent of this state, or of any county or subdivision of a county, or of any city, town, or village therein, in whose hands money, books, records, papers, or anything else required by law to be delivered by him to his successor in office or other person authorized by law to receive or have charge of the same, may be, shall wilfully and not in good faith refuse or neglect, on demand, to so deliver the same, he shall, on conviction, be imprisoned in the penitentiary not more than ten years, or be fined not more than one thousand dollars and be imprisoned in the county jail not more than one year.

HISTORY: Codes, 1880, § 2788; 1892, § 1064; 1906, § 1142; Hemingway's 1917, § 870; 1930, § 895; 1942, § 2121.

Cross References — White-collar crime investigations, see § 7-5-59.

Suit on state treasurer's bond for embezzlement, see § 7-9-51.

Failure of sheriff to pay over money collected and omission to execute process, see § 19-25-45.

Duties and liabilities as to public funds, see §§ 25-1-67 et seq.

Additional penalties on certain officers using public moneys for gambling, see § 97-33-3.

Description of property in indictment for embezzlement, see § 99-7-31.

JUDICIAL DECISIONS

1. In general.

County tax collector's guilty plea in state court to crimes of "willful neglect of duties" and "embezzlement" (§§ 97-11-25 through 97-11-31 and § 97-11-37) established that he committed active or deliberate dishonesty or fraud, which prevented tax collector from recovering on county's fidelity insurance policy, where policy did not cover losses due to "active or deliberate dishonesty or fraud", such that insurance company owed tax collector no funds that county could obtain by garnishment. State v. Richardson, 817 F.2d 1203, 1987 U.S. App. LEXIS 6847 (5th Cir. Miss. 1987).

RESEARCH REFERENCES

Am. Jur.

26 Am. Jur. 2d, Embezzlement §§ 33 et seq.

2 Am. Jur. Trials, Investigating Particular Crimes § 22 (embezzlement).

CJS.

29A C.J.S., Embezzlement §§ 15 et seq.

§ 97-11-29. Embezzlement; accounts to be kept by all public officers; false entries, false certificates, loan of public funds and fraud on the treasury.

The state treasurer, auditor of public accounts, assessors and collectors of taxes, and all other state and county officers, and officers of cities, towns and villages, shall make and keep in their offices, subject to inspection at all times, an accurate entry of each and every sum of public money, securities, stocks, or other public money whatever, by them received, transferred, or disbursed; and if any of said officers, either municipal, county or state, or a clerk, agent or employee of such officers, shall willfully and fraudulently make any false entry therein or make any certificate or endorsement of any warrant on the treasury that the same is genuine, when the same is in fact not a genuine warrant, or shall loan any portion of the public moneys, securities, stocks, or other public property intrusted to him, for any purpose whatever, or shall, by willful act or omission of duty whatever, defraud, or attempt to defraud, the state, or any county, city, town or village, of any moneys, security, or property, he shall, on conviction thereof, be guilty of embezzlement, and fined not less than double the amount or value of the moneys, security, stock or other property so embezzled, or committed to the department of corrections for not more than ten (10) years, or both.

HISTORY: Codes, 1857, ch. 64, art. 85; 1871, § 2550; 1880, § 2789; 1892, § 1065;

1906, § 1143; Hemingway's 1917, § 871; 1930, § 896; 1942, § 2122; Laws, 1979, ch. 508, § 14, eff from and after November 15, 1979 (the United States Attorney General interposed no objection to this amendment on July 6, 1979).

Editor's Notes — Section 7-7-2, as added by Laws, 1984, chapter 488, § 90, and amended by Laws, 1985, chapter 455, § 14, Laws 1986, chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws, 1989, chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws, 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — White-collar crime investigations, see § 7-5-59.

County budget, see §§ 19-11-1 et seq.

Failure of sheriff to pay over money collected and omission to execute process, see § 19-25-45.

Municipal budget, see §§ 21-35-1 et seq.

Duties and liabilities as to public funds, see §§ 25-1-67 et seq.

Conspiracy to defraud state, see §§ 97-7-11 et seq.

Additional penalties on certain officers using public moneys for gambling, see § 97-33-3.

Description of property in indictment for embezzlement, see § 99-7-31.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Indictment.
3. Evidence.
4. Questions for jury.
5. Instructions.

1. In general.

County tax collector's guilty plea in state court to crimes of "willful neglect of duties" and "embezzlement" (§§ 97-11-25 through 97-11-31 and § 97-11-37) established that he committed active or deliberate dishonesty or fraud, which prevented tax collector from recovering on county's fidelity insurance policy, where policy did not cover losses due to "active or deliberate dishonesty or fraud", such that insurance company owed tax collector no funds that county could obtain by garnishment. State v. Richardson, 817 F.2d 1203, 1987 U.S. App. LEXIS 6847 (5th Cir. Miss. 1987).

Chancery clerk who uses county funds, rather than chancery clerk monies, to pay chancery clerk employee's and matching employer contributions to state retirement fund is guilty of embezzlement. Schilling v. State, 473 So. 2d 975, 1985 Miss. LEXIS 2193 (Miss. 1985).

This section [Code 1942, § 2122] was inapplicable, or, at least not exclusively applicable, to an indictment, which improperly failed to specify the code section under which it was drawn, charging that a county superintendent of education, aided and abetted by two others who were not public officials, issued a false warrant knowing at the time no money was owing to the payee, and converted the proceeds thereof to his own use, thereby embezzling the school money of the county. Autry v. State, 230 Miss. 421, 92 So. 2d 856, 1957 Miss. LEXIS 385 (Miss. 1957).

In prosecution against member of county board of supervisors for attempting to defraud county by inducing it to pay money to named persons to whom member knew county was not indebted, refusal to require state to elect to proceed only on inducement as to one of named persons held not error. Heard v. State, 177 Miss. 661, 171 So. 775, 1937 Miss. LEXIS 151 (Miss. 1937).

In prosecution against member of county board of supervisors for attempting to defraud county by submitting third persons' claims for 1,899 loads of gravel sold county, with knowledge that such amount of gravel was not sold to county, district attorney's argument that no one testified to hauling 1,899 loads held not error as comment on member's failure to testify. Heard v. State, 177 Miss. 661, 171 So. 775, 1937 Miss. LEXIS 151 (Miss. 1937).

2. Indictment.

It was error to dismiss defendant's embezzlement indictment under Miss. Code Ann. § 97-11-29 because defendant had eventually paid for the pistol he was claimed to have embezzled since: (1) the sufficiency of evidence for an indictment could not be challenged before the trial on the merits after the State had presented its case; (2) the State had a right to appeal under Miss. Code Ann. § 99-35-103(a), and dismissal and remand for retrial were proper; (3) § 99-35-103(b) did not apply because neither side sought a bench trial nor stipulated to the facts, there was no risk that the trial judge would decide defendant's guilt at the hearing, and without risk of a determination of guilt, jeopardy did not attach; and (4) neither an appeal nor further prosecution constituted double jeopardy. State v. Parkman, 106 So. 3d 378, 2012 Miss. App. LEXIS 592 (Miss. Ct. App. 2012), cert. denied, 105 So. 3d 326, 2013 Miss. LEXIS 39 (Miss. 2013).

Indictment against member of county board of supervisors for attempting to defraud county by inducing it to pay money to named persons to whom member knew county was not indebted held not to charge more than one offense, notwithstanding that money was to be paid to more than one person. Heard v. State, 177 Miss. 661, 171 So. 775, 1937 Miss. LEXIS 151 (Miss. 1937).

3. Evidence.

The crime of attempted embezzlement is not established where the evidence fails to show an overt act on the part of the defendant to commit the crime charged before he abandoned his alleged purpose. Kern v. Noble, 206 So. 2d 200, 1968 Miss. LEXIS 1557 (Miss. 1968).

In prosecution against member of county board of supervisors for attempting to defraud county by inducing it to pay money to sellers of gravel whom member knew county was not indebted to in amount indicated on "pay roll" submitted by him, admission of second pay roll omitting some of names included on first pay roll held not error, since second pay roll was admission by member that first pay roll was not correct. Heard v. State, 177 Miss. 661, 171 So. 775, 1937 Miss. LEXIS 151 (Miss. 1937).

Member of county board of supervisors who submitted gravel claims of third persons in greater amount than was actually owing thereon would be presumed, in absence of evidence to contrary, to have intended to thereby defraud county, as respects whether member was guilty of embezzlement under statute. Heard v. State, 177 Miss. 661, 171 So. 775, 1937 Miss. LEXIS 151 (Miss. 1937).

4. Questions for jury.

Whether member of county board of supervisors had knowledge that gravel claims of third persons submitted by him were not owing in amounts submitted by him, so as to be guilty of embezzlement under statute, held for jury. Heard v. State, 177 Miss. 661, 171 So. 775, 1937 Miss. LEXIS 151 (Miss. 1937).

5. Instructions.

In prosecution against member of county board of supervisors for wilfully attempting to defraud county, instruction that jury could presume that member of county board of supervisors filed third persons' gravel claims against county in greater amounts than were due thereon, with intent to defraud county, held not error. Heard v. State, 177 Miss. 661, 171 So. 775, 1937 Miss. LEXIS 151 (Miss. 1937).

RESEARCH REFERENCES

Am. Jur.
26 Am. Jur. 2d, Embezzlement §§ 33 et seq.
2 Am. Jur. Trials, Investigating Particular Crimes § 22 (embezzlement).

CJS.
29A C.J.S., Embezzlement § 29.

§ 97-11-31. Embezzlement; fraud committed in public office.

If any officer, or other person employed in any public office, shall commit any fraud or embezzlement therein, he shall be committed to the department of corrections for not more than ten (10) years, or be fined not more than five thousand dollars ($5,000.00), or both.

HISTORY: Codes, 1880, § 2790; 1892, § 1066; 1906, § 1144; Hemingway's 1917, § 872; 1930, § 897; 1942, § 2123; Laws, 1979, ch. 508, § 15, eff from and after November 15, 1979 (the United States Attorney General interposed no objection to this amendment on July 6, 1979).

Cross References — White-collar crime investigations, see § 7-5-59.

Failure of sheriff to pay over money collected or omission to execute process, see § 19-25-45.

Additional penalties on certain officers using public funds for gambling, see § 97-33-3.

Description of property in indictment for embezzlement, see § 99-7-31.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Indictment.
3. Evidence.
4. Instructions.
5. Miscellaneous.

1. In general.

This section [Code 1942, § 2123] was applicable to an offense charged in an indictment, which improperly failed to specify the code section under which it was drawn, charging that the county superintendent of education aided and abetted by two others who were not public officials, issued a false warrant knowing at the time no money was owing to the payee, and converted the proceeds thereof to his own use, thereby embezzling school money of the county. Autry v. State, 230 Miss. 421, 92 So. 2d 856, 1957 Miss. LEXIS 385 (Miss. 1957).

Code 1942, § 2437, was not applicable in prosecution of a supervisor on a charge of employing a relative to work on the public roads and who instead employed him on his private farm and paid him out of public moneys, and was prosecuted under Code 1942, § 2123. Blakeney v. State, 228 Miss. 162, 87 So. 2d 472, 1956 Miss. LEXIS 501 (Miss. 1956).

Fraud involves a breach of duty, trust and confidence, and includes all acts, omissions or concealments by which another is injured, or an undue and unconscientious advantage is taken. Smith v. State, 107 Miss. 574, 65 So. 498, 1914 Miss. LEXIS 97 (Miss. 1914).

The section [Code 1942, § 2123] is a general law, covering all cases of fraud and embezzlement not specially provided for in the other sections. Hemingway v. State, 68 Miss. 371, 8 So. 317, 1890 Miss. LEXIS 20 (Miss. 1890).

A circuit clerk who issued a false and fraudulent witness pay-certificate, on its face good in substance, but defective in form, is guilty under the section [Code 1942, § 2123]. Bracey v. State, 64 Miss.

17, 8 So. 163, 1886 Miss. LEXIS 5 (Miss. 1886).

2. Indictment.

Indictment was not defective because it did not contain the type of personal use defendant engaged in that led to his indictment for embezzlement and fraud because the indictment sufficiently stated the essential elements of the crime and the acts which constituted the embezzlement or fraud. Terry v. State, 26 So. 3d 378, 2009 Miss. App. LEXIS 325 (Miss. Ct. App. 2009), cert. denied, 24 So. 3d 1038, 2010 Miss. LEXIS 34 (Miss. 2010).

In an indictment charging a county official and county employee with knowingly and feloniously defrauding the county under this section, the term "fraud committed in a public office" was not so vague as to fail constitutional muster since the indictment gave the statute under which the defendants were charged and followed its language, the language of the indictment was plain, and the defendants were therefore fully informed of the nature of the offense. Cumbest v. State, 456 So. 2d 209, 1984 Miss. LEXIS 1754 (Miss. 1984).

An indictment charging that defendant mayor's hotel bill was paid by a third party, and consequently this was not out of pocket expense to which he was entitled to reimbursement by the city, and that by making a claim for reimbursement and accepting the money knowing it was not due him, he did cheat and defraud the city of public funds, was sufficient under this section [Code 1942 § 2123]. State v. Grady, 281 So. 2d 678, 1973 Miss. LEXIS 1499 (Miss. 1973).

An indictment charging a county supervisor with the embezzlement of tractor parts was properly subject to demurrer where ownership of the property taken was not shown, the property taken was not described in language sufficiently definite as to identify it, and the value of the various parts was not alleged. Sisk v. State, 260 So. 2d 485, 1972 Miss. LEXIS 1574 (Miss. 1972).

An indictment charging that accused while acting as supervisor employed a distant relative to work upon public roads at the rate of $5 a day and ordered the relative to perform 7 ½ days work on his private farm and paid his relative by means of regular road and bridge fund warrants of said district, was sufficient under this section [Code 1942, § 2123]. Blakeney v. State, 228 Miss. 162, 87 So. 2d 472, 1956 Miss. LEXIS 501 (Miss. 1956).

An indictment charging that a trustee of the state penitentiary, fraudulently, etc., caused to be bought and participated in buying an automobile from himself and a third party held sufficient. Smith v. State, 107 Miss. 574, 65 So. 498, 1914 Miss. LEXIS 97 (Miss. 1914).

3. Evidence.

Evidence of defendant's intent to commit fraud in public office was sufficient to convict, as it was shown that defendant told a city mechanic and the owner of a supply shop different stories regarding defendant's need for auto parts and, subsequently, asked the supply shop owner to mislead investigators. Johnson v. State, 831 So. 2d 1171, 2002 Miss. App. LEXIS 530 (Miss. Ct. App. 2002).

Where supervisor who had employed a relative to work on public roads who instead worked on his private farm and was paid out of public moneys, and supervisor was convicted under this section [Code 1942, § 2123] and after the trial an unexplained receipt which had been signed by the relative for the sum of $24 for eight days labor was found, the supervisor should have been given a new trial on the ground of newly discovered evidence. Blakeney v. State, 228 Miss. 162, 87 So. 2d 472, 1956 Miss. LEXIS 501 (Miss. 1956).

Under an indictment for failing to account for and pay over to his superior certain license fees collected by one designated as chief clerk, it is material as to who actually made away with the money where numerous field men had equal access to the cigar box in which duplicate permits, cash and checks were kept, and where neither statute nor departmental regulations prescribed the duties or modus operandi of the chief clerk. Murphree v. State, 201 Miss. 34, 28 So. 2d 238, 1946 Miss. LEXIS 355 (Miss. 1946).

When the books of account, required to be kept by the auditor and the treasurer, agreed in showing a shortage in the accounts of the latter, the burden is on the latter to show errors in his account if he rely upon that as a defense. Hemingway v. State, 68 Miss. 371, 8 So. 317, 1890 Miss. LEXIS 20 (Miss. 1890).

Though, an indictment for embezzlement, which charges an officer with failure to pay over money to his successor, allege that the money was in his hands when his successor qualified, this allegation is immaterial and need not be proved. Hemingway v. State, 68 Miss. 371, 8 So. 317, 1890 Miss. LEXIS 20 (Miss. 1890).

To charge an officer with the receipt of money as shown by his books and report, it is not necessary for the state to prove beyond a reasonable doubt that he made the entries, or, caused them to be made. Hemingway v. State, 68 Miss. 371, 8 So. 317, 1890 Miss. LEXIS 20 (Miss. 1890).

In prosecution against a public officer who is required to keep correct accounts, where a balance due the state is shown by his own books, proof that the books show such balance, together with the failure to pay, unexplained, will alone warrant a conviction. Hemingway v. State, 68 Miss. 371, 8 So. 317, 1890 Miss. LEXIS 20 (Miss. 1890).

In a prosecution for embezzlement against the state treasurer it is sufficient if the testimony proves that the defendant has made way with the money or gotten rid of it wilfully and fraudulently in any manner not allowed by law; and if all the evidence furnished no reasonable explanation of what became of the money and raises no reasonable doubt of his guilt the jury should convict. Hemingway v. State, 68 Miss. 371, 8 So. 317, 1890 Miss. LEXIS 20 (Miss. 1890).

4. Instructions.

Where the defendant, and the county superintendent of education, were charged in the indictment with embezzlement of county school funds, a warrant for $1,629.00, an instruction which by its language relieved the prosecution of the burden of proving any particular act of embezzlement was erroneous. Mills v. State, 231 Miss. 687, 97 So. 2d 517, 1957 Miss. LEXIS 555 (Miss. 1957).

An instruction that if they believed that the accused and the county school superintendent were guilty of embezzling school funds, the jury might find the accused guilty regardless of whether he received any or all the money, was prejudicially erroneous, where there was no evidence upon which it could have been predicated, and since the accused had admitted that he had received the money, and there was no evidence that the county school superintendent received any part of the funds, the instruction left to the jury to conjecture that defendant might have been the instrumentality through which the county superintendent of education received all or some part of the allegedly embezzled funds, without there being any evidence to support such conjecture. Mills v. State, 231 Miss. 687, 97 So. 2d 517, 1957 Miss. LEXIS 555 (Miss. 1957).

Instruction held correct. Hemingway v. State, 68 Miss. 371, 8 So. 317, 1890 Miss. LEXIS 20 (Miss. 1890).

5. Miscellaneous.

Earlier case is overruled inasmusch as the distinction drawn by the majority was an unnecessary one, and one which has made the embezzlement statute, for all practical purposes, a dead letter. Gerrard v. State, 619 So. 2d 212, 1993 Miss. LEXIS 220 (Miss. 1993).

If a state official uses a power given to him by law to obtain monies wrongfully, it is the corruption of power that causes those monies to be obtained "by virtue of office" since the state official would never have had the means to misallocate funds had he not held an office which conferred that power upon him. Gerrard v. State, 619 So. 2d 212, 1993 Miss. LEXIS 220 (Miss. 1993).

County tax collector's guilty plea in state court to crimes of "willful neglect of duties" and "embezzlement" (§§ 97-11-25 through 97-11-31 and § 97-11-37) established that he committed active or deliberate dishonesty or fraud, which prevented tax collector from recovering on county's fidelity insurance policy, where policy did not cover losses due to "active or deliberate dishonesty or fraud", such that insurance company owed tax collector no funds that county could obtain by garnishment. State v. Richardson, 817 F.2d 1203, 1987 U.S. App. LEXIS 6847 (5th Cir. Miss. 1987).

Where defendant in a prosecution for embezzlement pleaded guilty in 1978 to two of ten indictments, the trial court erred in sentencing him to two concurrent terms of three years in prison, suspended, and $10,000 in fines since this section provides for either fine or imprisonment, but not both. Salter v. State, 387 So. 2d 81, 1980 Miss. LEXIS 2046 (Miss. 1980).

In an embezzlement prosecution, it was error for the special prosecutor to advise the jury as to what the district attorney had testified to, out of jury's presence, in regard to defendant's statement regarding the offense charged, but in view of defendant's failure to preserve the point by moving to strike from the record and asking that the jury be instructed to disregard it, or to secure a ruling to his objection to the special prosecutor's statement, the defendant was not in a position to complain as to the error upon an appeal from a conviction. O'Harrell v. State, 97 So. 2d 517 (Miss. 1957).

RESEARCH REFERENCES

Am. Jur.

26 Am. Jur. 2d, Embezzlement §§ 33 et seq.

2 Am. Jur. Trials, Investigating Particular Crimes § 22 (embezzlement).

CJS.

29A C.J.S., Embezzlement §§ 28, 29.

§ 97-11-33. Extortion; collecting unauthorized fees and fees for services not actually rendered.

If any judge, justice court judge, sheriff, deputy sheriff, sheriff's employee, constable, assessor, collector, clerk, county medical examiner, county medical examiner investigator, employee of the Mississippi Department of Corrections, employee of any contractor providing incarceration services or any other officer, shall knowingly demand, take or collect, under color of his office, any money fee or reward whatever, not authorized by law, or shall demand and receive, knowingly, any fee for service not actually performed, such officer, so offending, shall be guilty of extortion, and, on conviction, shall be punished by fine not exceeding Five Thousand Dollars ($5,000.00), or imprisonment for not more than five (5) years, or both, and shall be removed from office.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 2(5); 1857, ch. 64, art. 99; 1871, § 2712; 1880, § 2805; 1892, § 1081; 1906, § 1161; Hemingway's 1917, § 888; 1930, § 914; 1942, § 2144; Laws, 1979, ch. 508, § 16; Laws, 1986, ch. 459, § 40; Laws, 1997, ch. 431, § 1; Laws, 1997, ch. 462, § 1, eff from and after July 1, 1997.

Joint Legislative Committee Note — Section 1 of ch. 431, Laws, 1997, amended this section, effective July 1, 1997 (approved March 25, 1997). Section 1 of ch. 462, Laws, 1997, effective July 1, 1997 (approved March 26, 1997), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 462, Laws, 1997, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Cross References — White-collar crime investigations, see § 7-5-59.

Specific fees of officers, see §§ 25-7-1, 25-7-3.

Effect of conviction of certain crimes as disqualification to hold office in labor organization or to participate in labor management functions, see § 71-1-49.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Indictment.

1. In general.

Under § 1081, Code 1892, the tax collector is not entitled to exact from the purchaser of land at a tax sale the prepayment of fees given by the act of 1898 (laws of 1898 p. 52) for services to be rendered for two years thereafter. Baker v. Cox, 79 Miss. 306, 30 So. 641, 1901 Miss. LEXIS 47 (Miss. 1901).

Under § 1081 Code of 1892, the tax collector is not entitled to exact from the purchaser of land at a tax sale the prepayment of the fees given by the act of 1898 (laws of 1898 p. 52) for services to be rendered nearly two years thereafter in notifying delinquents that the tax sale is about to become absolute. Baker v. Cox, 79 Miss. 306, 30 So. 641, 1901 Miss. LEXIS 47 (Miss. 1901).

2. Indictment.

When defendant has been tried for murder and convicted of lesser offense of manslaughter, subsequent indictment for separate felony of shooting into occupied building based on same criminal episode is barred on double jeopardy grounds. Davis v. Herring, 800 F.2d 513, 1986 U.S. App. LEXIS 31243 (5th Cir. Miss. 1986).

Extortion, being a common-law offense, may be charged according to the statute or the common law, and by the latter it is sufficient to charge that it was "unlawfully, corruptly, deceitfully, extorsively and by color of office" done, without using the word "knowingly." State v. Jones, 71 Miss. 872, 15 So. 237, 1894 Miss. LEXIS 33 (Miss. 1894).

OPINIONS OF THE ATTORNEY GENERAL

A court order generally absolves personal liability for actions performed in accordance with the order, except where the order was based upon intentional misrepresentations or fraud. Bryant, Aug. 22, 1997, A.G. Op. #97-0487.

RESEARCH REFERENCES

ALR.

Extortion: What constitutes the taking of money or other thing of value under color of office. 70 A.L.R.3d 1153.

When is act of extortion performed "under color of official right" so as to be in violation of Hobbs Act (18 USCS § 1951). 74 A.L.R. Fed. 199.

Am. Jur.

31A Am. Jur. 2d, Extortion, Blackmail, and Threats §§ 6-16.

2 Am. Jur. Trials, Investigating Particular Crimes § 66 (extortion).

CJS.

35 C.J.S., Extortion § 4.

§ 97-11-35. Failure to return known offenders; purposeful avoidance of knowledge of offense.

If any judge, justice court judge, constable, member of the board of supervisors, sheriff, or other peace officer, shall wilfully neglect or refuse to return any person committing any offense against the laws, committed in his view or knowledge, or of which he has any notice, or shall wilfully absent himself when such offense is being or is about to be committed, for the purpose of avoiding a knowledge of the same, he shall, on conviction, be fined not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00), and may, in the discretion of the court, be removed from office.

HISTORY: Codes, 1871, § 2889; 1880, § 2756; 1892, § 1225; 1906, § 1301; Hemingway's 1917, § 1034; 1930, § 1065; 1942, § 2297; Laws, 1986, ch. 459, § 41, eff from and after July 1, 1986.

Cross References — Civil liability of officers for failure to perform duty, see § 25-1-45.

Officer permitting escape of prisoners, see § 97-9-39.

OPINIONS OF THE ATTORNEY GENERAL

With regard to judges, word "return" means to file charges or affidavit against such person in proper court. O'Brien Oct. 13, 1993, A.G. Op. #93-0701.

§ 97-11-37. Failure to perform any duty.

If any person, being sheriff, clerk of any court, constable, assessor, or collector of taxes, or holding any county office whatever, or mayor, marshal, or constable, or any other officer of any city, town, or village, shall knowingly or wilfully fail, neglect, or refuse to perform any of the duties required of him by law, or shall fail or refuse to keep any record required to be kept by law, or shall secrete the same, or shall violate his duty in any respect, he shall, on conviction thereof, be fined not exceeding One Thousand Dollars ($1,000.00), or be imprisoned in the county jail not exceeding six (6) months, or both.

HISTORY: Codes, Hutchinson's 1848, ch. 33, art. 14(1); 1857, ch. 64, art. 62; 1871, § 2890; 1880, § 2757; 1892, § 1226; 1906, § 1302; Hemingway's 1917, § 1035; 1930, § 1066; 1942, § 2298; Laws, 1986, ch. 459, § 42, eff from and after July 1, 1986.

Cross References — Constitutional requirement that public officer or employee personally devote his time to performance of duties, see Miss Const Art. 14, § 267.

Penalty for constable's neglect of duty, see § 19-19-15.

Liability for failure to return execution, see § 19-25-41.

Penalty for unauthorized municipal appropriation, see § 21-39-15.

Civil liability of officers for failure to perform duties, see § 25-1-45.

Removals from office, see §§ 25-5-1 et seq.

Duties of tax assessors, see § 27-1-5.

Duties of state tax commission, see §§ 27-3-31, 27-3-33.

Liability of tax collector and assessor, see § 27-29-29.

Penalty for violating chapter on public purchases, see § 31-7-55.

Penalty on clerk for failure of duty, as to land and conveyances, see § 89-5-43.

Penalty for demanding and receiving a fee for service not performed, see § 97-11-33.

Punishment of officers for failing in their duties under the vagrancy chapter, see § 97-35-43.

JUDICIAL DECISIONS

1. In general.

County tax collector's guilty plea in state court to crimes of "willful neglect of duties" and "embezzlement" (§§ 97-11-25 through 97-11-31 and § 97-11-37) established that he committed active or deliberate dishonesty or fraud, which prevented tax collector from recovering on county's fidelity insurance policy, where policy did not cover losses due to "active or deliberate dishonesty or fraud", such that insurance company owed tax collector no funds that county could obtain by garnishment. State v. Richardson, 817 F.2d 1203, 1987 U.S. App. LEXIS 6847 (5th Cir. Miss. 1987).

Where county taxpayer pleads guilty to crimes of embezzlement and willfully neglecting his duties, it is established that tax collector committed active or deliberate dishonesty or fraud, such that public officials liability insurance policy which excluded coverage for losses due to active or deliberate dishonesty or fraud, did not cover county's losses suffered by reason of tax collector's acts. State v. Richardson, 817 F.2d 1203, 1987 U.S. App. LEXIS 6847 (5th Cir. Miss. 1987).

Where the mayor and aldermen of a city failed to give notice of an election to determine the question whether there should be an increase in taxation for a specified year, they were subject to indictment. State v. Glennen, 93 Miss. 836, 47 So. 550, 1908 Miss. LEXIS 154 (Miss. 1908).

A justice of the peace, on conviction of a sheriff before him for misconduct in office, has no jurisdiction to remove him from office. Moore v. State, 45 So. 866 (Miss. 1908).

RESEARCH REFERENCES

ALR.
Liability of public officer or body for harm done by prisoner permitted to escape. 44 A.L.R.3d 899.

Am. Jur.
63C Am. Jur. 2d, Public Officers and Employees § 371.

CJS.
67 C.J.S., Officers and Public Employees §§ 249-251.

§ 97-11-39. Military officers; resigning to evade obedience to order prohibited.

Any officer who shall offer to resign in order to evade obedience to a lawful order of his superior officer, shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine not to exceed one hundred dollars or by imprisonment in the county jail not to exceed sixty days, or by both such fine and imprisonment, at the discretion of the court and in addition thereto, if the conviction be by a military court, he may be dismissed from the service of the state or suffer such punishment as the court martial may decide.

HISTORY: Codes, 1892, § 1231; 1906, § 1307; Hemingway's 1917, § 1040; 1930, § 1072; 1942, § 2305; Laws, 1916, ch. 245.

Cross References — State code of military justice, see §§ 33-13-1 et seq.

Failure to report for active militia duty, see § 97-7-59.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am. Jur.
53 Am. Jur. 2d, Military and Civil Defense § 44.

§ 97-11-41. Oath of office and bond; elected officials not to exercise duties before taking oath or giving bond, as required.

If any person elected to any office shall undertake to exercise the same or discharge the duties thereof without first having taken the oath of office or given bond as required by law, he shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined not more than five hundred dollars, or imprisoned in the county jail not longer than one year, or both.

HISTORY: Codes, 1857, ch. 64, art. 81; 1871, § 320; 1880, § 2780; 1892, § 1057; 1906, § 1135; Hemingway's 1917, § 863; 1930, § 888; 1942, § 2114.

Cross References — Constitutional provision for oath of officers, see Miss Const Art. 14, § 268.

Officers' oaths and bonds, see §§ 25-1-9 et seq.

Commission of officer not being necessary, see § 25-1-35.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

OPINIONS OF THE ATTORNEY GENERAL

A newly elected school board member who casts a vote prior to his being bonded and taking the oath of office violates Section 97-11-41; however, any vote so taken may be binding as that of a de facto officer under Section 25-1-37. Mabry, Apr. 27, 2001, A.G. Op. #01-0239.

RESEARCH REFERENCES

Am. Jur.

63C Am. Jur. 2d, Public Officers and Employees §§ 124 et seq., 130 et seq.

§ 97-11-43. Railroad fares; government officials to pay same fare as general passengers; accepting and using free pass.

If any officer, state, county, district, or municipal, except the Public Service Commissioners when in the actual discharge of official duties, shall travel or ride upon any railroad without paying absolutely and without any guile, trick, subterfuge, or evasion whatsoever, the same fare required of passengers generally, or if any railroad company, or officer or employee of any railroad company, shall permit any such state, county, district, or municipal officer, except Public Service Commissioners when in the actual discharge of official duties, to so travel or ride, he or it shall be guilty of a misdemeanor, and shall be fined not less than fifty dollars nor more than five hundred dollars, or be imprisoned in the county jail not less than ten days nor more than sixty days, or both.

HISTORY: Codes, 1892, § 1230; 1906, § 1306; Hemingway's 1917, § 1039; 1930, § 1071; 1942, § 2303; Laws, 1884, p. 45.

Cross References — Constitutional prohibition against railroads or other transportation companies granting free passes or transportation to public officers, see Miss. Const. Art. 7, § 188.

Prohibition against carriers granting free transportation, rebates or reduction of charges, see § 77-9-15.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am. Jur.
63C Am. Jur. 2d, Public Officers and Employees §§ 369 et seq.

§ 97-11-45. Tax collector and chancery clerk; failure to perform duty in respect to duplicate tax receipts.

Any tax collector who shall fail to fill up, in case of the payment of taxes to him, the duplicate tax receipt required by law to be filled up by him, or to preserve the book of duplicate receipts filled, or to submit such book or books to the board of supervisors when required, or to deliver such book or books to the clerk of the chancery court shall, upon conviction, be removed from office, and be fined not less than one thousand dollars, and be imprisoned in the county jail not less than six months; and any clerk who shall refuse to receive or receipt for such book or books when delivered or tendered to him, or to preserve the same as a record of his office, shall be fined not more than three hundred dollars, and imprisoned in the county jail not exceeding three months.

HISTORY: Codes, 1880, § 516; 1892, § 1236; 1906, § 1312; Hemingway's 1917, § 1045; 1930, § 1077; 1942, § 2310.

Cross References — Tax receipts, see §§ 27-41-29 et seq.

RESEARCH REFERENCES

Am. Jur.
63C Am. Jur. 2d, Public Officers and Employees §§ 369 et seq.

§ 97-11-47. Tax collector; failure to make settlement.

Any tax collector who shall wilfully fail or refuse for ten days after the time appointed by law for any monthly payment or final settlement, to make the same, shall be guilty of a misdemeanor, and, on conviction, he shall be removed from office and fined not exceeding one thousand dollars.

HISTORY: Codes, 1880, § 553; 1892, § 1237; 1906, § 1313; Hemingway's 1917, § 1046; 1930, § 1078; 1942, § 2311.

Cross References — Governor's power to suspend alleged defaulting tax collectors, see Miss Const Art. 5, § 125.

Suspension of alleged defaulting tax collectors, see § 7-1-57.

Debits and credits to tax collector, see §§ 19-17-13 et seq.

Publishing names of defaulting officers, see § 25-1-63.

Monthly reports required of tax collector, see § 27-29-11.

Effect of tax collector's failure to report, see § 27-29-25.

Duties of tax collector about to go out of office, see § 27-29-31.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

County in default to the city to the extent of payments collected and held for over a year. Smith v. Winona, 222 Miss. 318, 75 So. 2d 903, 1954 Miss. LEXIS 648 (Miss. 1954).

A tax collector, having received tax money although paid under protest, is under a positive duty to pay over the same to the proper authorities on the first day of the month immediately following such collection, or within twenty days thereafter, under the penalty of payment of 30 per cent per annum damages, etc. Yazoo & M. V. R. Co. v. Conner, 188 Miss. 352, 194 So. 915, 1940 Miss. LEXIS 32 (Miss. 1940).

A tax collector was not liable to a taxpayer for refund of taxes paid under protest, since a tax collector is under a mandatory duty to pay over the money collected to the proper authorities on the first day of the month immediately following such collection or within twenty days thereafter, under the penalty of being subject to suspension and damages. Yazoo & M. V. R. Co. v. Conner, 188 Miss. 352, 194 So. 915, 1940 Miss. LEXIS 32 (Miss. 1940).

RESEARCH REFERENCES

Am. Jur.

63C Am. Jur. 2d, Public Officers and Employees §§ 369 et seq.

§ 97-11-49. Tax collector; collecting privilege tax without issuing license.

If any tax collector, or deputy or agent of any tax collector, shall collect any privilege tax without issuing to the party from whom the tax is collected the auditor's license therefor as provided for by law, he shall, on conviction, be fined not less than double the amount of the tax, and be imprisoned in the county jail not less than one (1) week; and if the failure be wilful, he shall be removed from office.

HISTORY: Codes, 1892, § 1238; 1906, § 1314; Hemingway's 1917, § 1047; 1930, § 1079; 1942, § 2312; Laws, 1884, p. 15; Laws, 1968, ch. 361, § 2, eff from and after January 1, 1972.

Editor's Notes — Section 7-7-2, as added by Laws, 1984, chapter 488, § 90, and amended by Laws, 1985, chapter 455, § 14, Laws 1986, chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws, 1989, chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws, 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Removals from office, see §§ 25-5-1 et seq.

Issuance of privilege tax licenses, see §§ 27-15-205, 27-17-455.

§ 97-11-51. Trustees of state institutions not to incur liability in excess of income.

It shall be unlawful for the board of trustees or other authority of any state-owned institution maintained in whole or in part by the state, or any state department, having charge of the disbursement or expenditure of the income provided by legislative appropriation and otherwise for such institution or department to expend, contract for the expenditure, or permit the incurring of any liability in excess of the income so provided, and it shall be and is hereby made the duty of any and all such authorities to keep the expenditures and obligations within the amount of said income, but in cases of extreme emergency arising from acts of Providence, epidemics, fire, storm, or flood, said authorities may, upon the written consent of a majority of the members of the state senate, and a majority of the members of the house of representatives and the approval of the governor, exceed such appropriation by the amounts to be so stipulated and agreed upon.

Any authority or member of a board of trustees violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty ($50.00) dollars nor more than five hundred ($500.00) dollars or imprisoned in the county jail for not less than thirty days nor more than six months, or by both such fine and imprisonment, and in addition thereto shall be personally liable, and liable on his bond, for the amount of the excess thus unlawfully expended, and shall be removed from office or from such employment.

HISTORY: Codes, 1942, § 2304; Laws, 1932, ch. 134.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

ALR.

Beneficiary's consent to, acquiescence in, or ratification of, trustee's improper allocation or distribution of assets. 29 A.L.R.2d 1034.

Am. Jur.

6 Am. Jur. Proof of Facts 3d, Act of God, §§ 1 et seq.

§ 97-11-53. Offer of inducements to influence public official's action on award of contracts or accomplishment of official acts.

As used in this section the following words shall have the following meaning:

(1) Person: individual, firm, corporation, association, partnership or other legal entity.

(2) Public official:

(a) Any elected official of the State of Mississippi or of any political subdivision thereof, or

(b) Any officer, director, commissioner, supervisor, chief, head, agent or employee of:

(i) The State of Mississippi,

(ii) Any agency of the State of Mississippi,

(iii) Any political subdivision of the State of Mississippi,

(iv) Any body politic of the State of Mississippi, or

(v) Any entity created by or under the laws of the State of Mississippi or by executive order of the Governor of the State of Mississippi and which expends public funds.

No person shall directly or indirectly offer, promise, give or agree to give to any public official or his spouse any money, property, or other tangible or intangible thing of value as an inducement or incentive for (a) the awarding or refusal to award a contract by any of the entities referred to in subsections (i) through (v) of subsection 2-b of this section; (b) the purchase, sale or lease of property by any of the entities referred to in subsections (i) through (v) of subsection 2-b of this section; or (c) the accomplishment of any official act or purpose involving public funds or public trust.

Any person who violates the terms of this section shall be guilty of a felony and shall, upon conviction, be imprisoned in the penitentiary not more than ten (10) years, or be fined not more than five thousand dollars ($5,000.00), or both; and in addition such person and the firm, corporation, partnership, association or other type of business entity which he represents shall be barred for a period of five (5) years from the date of conviction from doing business with the State of Mississippi or any political subdivision thereof or any other public entity referred to in this section.

No public official shall directly or indirectly accept, receive, offer to receive or agree to receive any gift, offer, or promise of any money, property or other tangible or intangible thing of value as an inducement or incentive for (a) the awarding or refusal to award a contract by any of the entities referred to in subsections (i) through (v) of subsection 2-b of this section; (b) the purchase, sale or lease of property by any of the entities referred to in subsections (i) through (v) of subsection 2-b of this section; or (c) the accomplishment of any official act or purpose involving public funds or public trust.

Any public official who violates the terms of this section or whose spouse does so with his knowledge and consent, shall be guilty of a felony and shall, upon conviction, be imprisoned in the penitentiary not more than ten (10) years, or be fined not more than five thousand dollars ($5,000.00), or both; and in addition, upon conviction such public official shall forfeit his office, if any he hold, and be forever disqualified from holding any public office, trust, appointment or employment with the State of Mississippi or any political subdivision thereof or with any other public entity referred to in this section.

Each violation of the provisions of this section shall constitute a separate offense.

HISTORY: Laws, 1974, ch. 541, § 2, eff from and after passage (approved April 12, 1974).

Cross References — White-collar crime investigation, see § 7-5-59.

Regulations governing public purchases generally, see §§ 31-7-1 et seq.

Illegality of kickbacks in connection with medicaid benefits, see § 43-13-207.

Offering property to officer or his spouse to influence officer's actions, see § 97-11-11.

Penalty for acceptance of bribe by officer or his spouse, see § 97-11-13.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

JUDICIAL DECISIONS

1. Official act element.

In defendant's trial on charges of violating Miss. Code Ann. § 97-11-53, inducement to influence a public official, the trial court did not err in denying defendant's motion for judgment notwithstanding the judgment or for a new trial because a videotaped meeting clearly showed that defendant had accepted payment of $ 5,000, and acknowledged having previously accepted an additional $ 2,500, in return for his aid in securing other city council member's approval of a property owner's construction project. Also the "official act" element of the offense was satisfied because in trying to secure the council's approval, defendant, as an official act, called a city council meeting and presented the property owners' documents to show the progress made on the project. Edmonson v. State, 906 So. 2d 73, 2004 Miss. App. LEXIS 1124 (Miss. Ct. App. 2004).

RESEARCH REFERENCES

ALR.

Recovery of money paid, or property transferred, as a bribe. 60 A.L.R.2d 1273.

Bribery: Criminal liability of corporation for bribery or conspiracy to bribe public official. 52 A.L.R.3d 1274.

Validity of state statute prohibiting award of government contract to person or business entity previously convicted of bribery or attempting to bribe state public employee. 7 A.L.R.4th 1202.

Requirement under defense procurement and general procurement statutes (10 USCS § 2306(b); 41 USCS § 254(a)) and regulations promulgated thereunder (32 CFR §§ 1-1500 et seq.; 41 CFR §§ 1-1.500 et seq.) that government contract for property and services contain warranty against commission or contingent fees. 60 A.L.R. Fed. 263.

Who is public official within meaning of federal statute punishing bribery of public official (18 U.S.C.S. § 201). 161 A.L.R. Fed. 491.

Am. Jur.

12 Am. Jur. 2d, Bribery §§ 15 et seq.

37 Am. Jur. Trials 273, Handling the Defense in a Bribery Prosecution.

CJS.

11 C.J.S., Bribery §§ 1 et seq.

CHAPTER 13.

ELECTION CRIMES

Sec.
97-13-1. Bribery; influencing electors or election officers.
97-13-3. Bribery; hiring canvasser to use unlawful means.
97-13-5. Ballot boxes; holding election with box unlocked; reading ballot before putting in box.
97-13-7. Ballot boxes; unauthorized disposal of box; giving key.
97-13-9. Ballots; false entries on voting lists; stuffing; removing, altering, etc.
97-13-11. Repealed.
97-13-13. Ballots; removal before close of polls.
97-13-15. Limitations on corporate contributions to political party or candidate.
97-13-17. Limitations on corporate contributions to political party or candidate; penalty.
97-13-18. Repealed.
97-13-19. Corrupt conduct, etc., by election official.
97-13-21. Disturbing election.
97-13-23. Failure or refusal to make return of votes cast.
97-13-25. Registration; falsely procuring registration.
97-13-27. Registration; neglect or misconduct by registrar.
97-13-29. Troops of armed men not to be brought near election place.
97-13-31. Voting; aid in preparing ballot prohibited.
97-13-33. Voting; dishonest decisions by managers concerning qualifications of voters.
97-13-35. Voting; by unqualified person, or at more than one place, or for both parties in same primary.
97-13-36. Multiple voting; penalties.
97-13-37. Intimidating, boycotting, etc., elector to procure vote.
97-13-39. Intimidating elector to prevent voting.
97-13-41. Penalty for false entry, unauthorized revision, removal or alteration in Statewide Elections Management System or poll book.
97-13-43. Penalty for willfully tampering with or damaging voting machine, tabulating computer or other device used in connection with election or preventing correct operation of said machine or device.
97-13-45. Penalty for unlawfully showing ballot to another, making false statement as to inability to mark ballot, or marking ballot so as to identify voter.

§ 97-13-1. Bribery; influencing electors or election officers.

If any elector, manager, clerk or canvasser at any election, or any executive officer attending the same, shall receive any gift, money, financial award, reward, or promise thereof or if any person shall offer such gift, money, financial award, reward, or promise thereof to influence any elector, clerk, canvasser, or any executive officer attending any election in his vote, opinion, action, or judgment in relation to such election, the person so offending shall, on conviction, be imprisoned in the State Penitentiary not more than two (2) years, or be fined not more than Three Thousand Dollars ($3,000.00), or both; or in a county jail not more than one (1) year, or be fined not more than One Thousand Dollars ($1,000.00), or both.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 6(1); 1857, ch. 64, art. 37; 1871, § 2514; 1880, § 2370; 1892, § 984; 1906, § 1060; Hemingway's 1917, § 788; 1930, § 804; 1942, § 2030; Laws, 2016, ch. 430, § 1, eff from and after Jan. 1, 2017.

Cross References — White-collar crime investigation, see § 7-5-59.

Procedure upon determination by election commissioners that allegations contained in complaint of violation of election law would be violation of § 23-15-1 et seq. or this chapter, see § 23-15-903.

Conviction of crime under this chapter as disqualification from serving on temporary municipal or county executive committees or county, municipal or state executive committees, see § 25-1-113.

Illegal registration and voting, see §§ 97-13-5 et seq.

Intimidating, boycotting, etc., elector to procure vote, see § 97-13-37.

Intimidating elector to prevent vote, see § 97-13-39.

JUDICIAL DECISIONS

1. In general.

Cash drawing sponsored by political candidate does not constitute violation of bribery statutes, candidate gift statute, or lottery statute where scheme sponsored by candidate requires only that voters who wish to participate in cash drawing participate in election and where scheme expressly disclaims attempt to influence direction of vote. Naron v. Prestage, 469 So. 2d 83, 1985 Miss. LEXIS 2066 (Miss. 1985).

RESEARCH REFERENCES

Am. Jur.

12 Am. Jur. 2d, Bribery §§ 1 et seq.

26 Am. Jur. 2d, Elections §§ 351 et seq.

37 Am. Jur. Trials 273, Handling the Defense in a Bribery Prosecution.

CJS.

11 C.J.S., Bribery §§ 1 et seq.

29 C.J.S., Elections § 554, 555.

Law Reviews.

Mississippi Election Code of 1986, 56 Miss. L. J. 535, December 1986.

§ 97-13-3. Bribery; hiring canvasser to use unlawful means.

If any person shall offer or give a gift, money, financial award, reward or other promise thereof to another for the purpose of inducing him, by any unlawful means not amounting to bribery, to procure any person to vote at any election for or against any person or measure, the person so giving or offering such reward shall, upon conviction thereof, be imprisoned in the county jail not more than one (1) year, or fined not more than One Thousand Dollars ($1,000.00), or both.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 6(3); 1857, ch. 64, art. 38; 1871, § 2515; 1880, § 2731; 1892, § 985; 1906, § 1061; Hemingway's 1917, § 789; 1930, § 805; 1942, § 2031; Laws, 2016, ch. 430, § 2, eff from and after Jan. 1, 2017.

Cross References — White-collar crime investigation, see § 7-5-59.

Conviction of crime under this chapter as disqualification from serving on temporary municipal or county executive committees or county, municipal or state executive committees, see § 25-1-113.

Illegal voting, see §§ 97-13-5 et seq.

Intimidating, boycotting, etc., elector to procure vote, see § 97-13-37.

Intimidating elector to prevent vote, see § 97-13-39.

RESEARCH REFERENCES

Am. Jur.

12 Am. Jur. 2d, Bribery §§ 1 et seq.

26 Am. Jur. 2d, Elections §§ 351 et seq.

37 Am. Jur. Trials 273, Handling the Defense in a Bribery Prosecution.

CJS.

11 C.J.S., Bribery §§ 1 et seq.

29 C.J.S., Elections § 554, 555.

§ 97-13-5. Ballot boxes; holding election with box unlocked; reading ballot before putting in box.

Any such manager who shall proceed to any election without having the ballot box locked and secured in the manner directed by law, or who shall open and read or consent to any other person opening and reading any ballot given him to be deposited in the box at such election, before it is put into the box, shall, upon conviction, be imprisoned in the county jail not more than one (1) year, or be fined not more than One Thousand Dollars ($1,000.00), or both.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 6(6); 1857, ch. 64, art. 75; 1871, § 2539; 1880, § 2774; 1892, § 1046; 1906, § 1124; Hemingway's 1917, § 850; 1930, § 875; 1942, § 2101; Laws, 2016, ch. 430, § 3, eff from and after Jan. 1, 2017.

Cross References — Conviction of crime under this chapter as disqualification from serving on temporary municipal or county executive committees or county, municipal or state executive committees, see § 25-1-113.

RESEARCH REFERENCES

ALR.

Reviewability before trial of order denying qualified immunity to defendant sued in state court under 42 USCS § 1983. 49 A.L.R.5th 717.

Actionability, under 42 USCS § 1983, of claim arising out of maladministration of election. 66 A.L.R. Fed. 750.

Am. Jur.

26 Am. Jur. 2d, Elections §§ 348 et seq.

CJS.

29 C.J.S., Elections §§ 540 et seq.

§ 97-13-7. Ballot boxes; unauthorized disposal of box; giving key.

Any manager of an election who, before the votes are counted, shall dispose of or deposit the ballot box in a manner not authorized by law, or shall, at any time after the election has begun and before the ballots are counted, give access to the ballot box with which he is entrusted to any other, shall, upon conviction, be imprisoned in the county jail not more than one (1) year, or be fined not more than Three Thousand Dollars ($3,000.00), or both.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 6(7); 1857, ch. 64, art. 76; 1871, § 2540; 1880, § 2775; 1892, § 1047; 1906, § 1125; Hemingway's 1917, § 851; 1930, § 876; 1942, § 2102; Laws, 2016, ch. 430, § 4, eff from and after Jan. 1, 2017.

RESEARCH REFERENCES

Am. Jur.
26 Am. Jur. 2d, Elections §§ 348 et seq.

CJS.
29 C.J.S., Elections §§ 540 et seq.

§ 97-13-9. Ballots; false entries on voting lists; stuffing; removing, altering, etc.

If any manager or clerk of any election shall knowingly make or consent to any false entry on the list of persons voting, or shall permit to be put in the ballot box any ballot not given by a voter, or shall take out of such box, or permit to be so taken out, any ballot deposited therein except in the manner prescribed by law, or shall, by any other act or omission, designedly destroy or change the ballots given by the electors, he shall, upon conviction, be punished by imprisonment in the State Penitentiary for a term not exceeding five (5) years, or be fined not more than Five Thousand Dollars ($5,000.00).

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 6(5); 1857, ch. 64, art. 74; 1871, § 2538; 1880, § 2773; 1892, § 1045; 1906, § 1123; Hemingway's 1917, § 849; 1930, § 874; 1942, § 2100; Laws, 2016, ch. 430, § 5, eff from and after Jan. 1, 2017.

Cross References — Conviction of crime under this chapter as disqualification from serving on temporary municipal or county executive committees or county, municipal or state executive committees, see § 25-1-113.

Taking or removing ballots from voting place, see § 97-13-13.

JUDICIAL DECISIONS

1. Malice or deliberate design.

In a murder case, a depraved heart murder instruction did not constructively amend the indictment where every murder committed with deliberate design is by definition done in the commission of an act imminently dangerous to others. Little v. State, 883 So. 2d 120, 2004 Miss. App. LEXIS 425 (Miss. Ct. App.), cert. denied, 882 So. 2d 772, 2004 Miss. LEXIS 1204 (Miss. 2004).

RESEARCH REFERENCES

Am. Jur.
26 Am. Jur. 2d, Elections §§ 348 et seq.

CJS.
29 C.J.S., Elections §§ 540 et seq.

§ 97-13-11. Repealed.

Repealed by Laws, 1988, ch. 309, § 1, eff from and after December 9, 1988 (the date the United States Attorney General interposed no objection to the repeal of this section).

§ 97-13-11. [Codes, 1892, § 1053; 1906, § 1131; Hemingway's 1917, § 857; 1930, § 882; 1942, § 2108]

Editor's Notes — Former § 97-13-11 related to the failure to keep official ballots secret.

§ 97-13-13. Ballots; removal before close of polls.

If any person shall take or remove any ballot from a voting place before the close of the polls, he shall, on conviction, be imprisoned in the county jail not more than one (1) year, or be fined not more than One Thousand Dollars ($1,000.00), or both.

HISTORY: Codes, 1892, § 1054; 1906, § 1132; Hemingway's 1917, § 858; 1930, § 883; 1942, § 2109; Laws, 2016, ch. 430, § 6, eff from and after Jan. 1, 2017.

Cross References — Conviction of crime under this chapter as disqualification from serving on temporary municipal or county executive committees or county, municipal or state executive committees, see § 25-1-113.

RESEARCH REFERENCES

ALR.

Reviewability before trial of order denying qualified immunity to defendant sued in state court under 42 USCS § 1983. 49 A.L.R.5th 717.

Actionability, under 42 USCS § 1983, of claim arising out of maladministration of election. 66 A.L.R. Fed. 750.

§ 97-13-15. Limitations on corporate contributions to political party or candidate.

It shall be unlawful for any corporation, incorporated company or incorporated association, by whatever name it may be known, incorporated or organized under the laws of this state, or doing business in this state, or for any servant, agent, employee or officer thereof, to give, donate, appropriate or furnish directly or indirectly, any money, security, funds or property of said corporation, incorporated company or incorporated association, in excess of One Thousand Dollars ($1,000.00) per calendar year for the purpose of aiding any political party or any candidate for any public office, or any candidate for any nomination for any public office of any political party, or to give, donate, appropriate or furnish, directly or indirectly, any money, security, funds or property of said corporation, incorporated company or association in excess of One Thousand Dollars ($1,000.00) to any committee or person as a contribution to the expense of any political party or any candidate, representative or committee of any political party or candidate for nomination by any political party, or any committee or other person acting in behalf of such candidate. The limit of One Thousand Dollars ($1,000.00) for contributions to political parties, candidates and committees or other persons acting in behalf of such candidates shall be an annual limitation applicable to each calendar year.

HISTORY: Codes, Hemingway's 1917, § 861; 1930, § 886; 1942, § 2112; Laws, 1908, ch. 124; Laws, 1978, ch. 479, § 5; Laws, 1999, ch. 301, § 19, eff January 15, 1999 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

Editor's Notes — Laws of 1999, ch. 301, was House Bill 1609, 1998 Regular Session, and originally passed both Houses of the Legislature on April 3, 1998. The Governor vetoed House Bill 1609 on April 17, 1998. The veto was overriden by the State Senate and House of Representatives on January 5, 1999.

On January 15, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1999, ch. 301, § 19.

Cross References — Conviction of crime under this chapter as disqualification from serving on temporary municipal or county executive committees or county, municipal or state executive committees, see § 25-1-113.

Protection of social, civil, and political rights of employees, see § 79-1-9.

Comparable Laws from other States — Alabama Code, §§ 36-25-6, 17-22A-1 through 17-22A-23.

Arkansas Code Annotated, §§ 7-6-201 through 7-6-218.

Georgia Code Annotated, §§ 21-5-30 through 21-5-44.

Louisiana Revised Statutes Annotated, § 18:1481 et seq.

Tennessee Code Annotated, §§ 2-10-101 through 2-10-310.

Texas Election Code, §§ 251.001 et seq., 258.001 et seq.

JUDICIAL DECISIONS

1. In general.

Donation by the general manager of $1,200 of funds of an association to candidates for public office was in complete violation of the statutory prohibition, and the corporation was entitled to recover that amount plus interest from the date of contribution. Capital Electric Power Asso. v. Phillips, 240 So. 2d 133, 1970 Miss. LEXIS 1271 (Miss. 1970).

OPINIONS OF THE ATTORNEY GENERAL

This section and § 23-15-807 are specifically directed to candidates seeking public office in which the general electorate will vote. Therefore, these code sections would not apply to elections within the House of Representatives; thus, corporate contributions to a candidate seeking election as Speaker of the House of Representatives would not be limited and would not be required to be reported. Ford, October 4, 1995, A.G. Op. #95-0456.

RESEARCH REFERENCES

ALR.

Power of corporation to make political contribution or expenditure under state law. 79 A.L.R.3d 491.

Am. Jur.

26 Am. Jur. 2d, Elections §§ 352 et seq., 462 et seq.

§ 97-13-17. Limitations on corporate contributions to political party or candidate; penalty.

Any corporation, incorporated company or incorporated association, or agent, officer or employee violating any of the provisions of section 97-13-15 shall, upon conviction, be fined not less than one thousand dollars ($1,000.00) nor more than five thousand dollars ($5,000.00).

HISTORY: Codes, Hemingway's 1917, § 862; 1930, § 887; 1942, § 2113; Laws, 1908, ch. 124; Laws, 1978, ch. 479, § 6, eff from and after passage (approved April 14, 1978), (the United States Attorney General interposed no objection to this amendment on May 5, 1978).

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

ALR.

Power of corporation to make political contribution or expenditure under state law. 79 A.L.R.3d 491.

§ 97-13-18. Repealed.

Repealed by Laws of 2017, ch. 441, § 204, effective July 1, 2017.

§ 97-13-18. [Laws, 1999, ch. 301, § 20, eff January 15, 1999 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section.)]

Editor's Notes — Former § 97-13-18 prohibited foreign nationals from making contributions or expenditures to or on behalf of political parties or candidates. For present provisions relating to campaign contributions by foreign nationals, see § 23-15-819.

§ 97-13-19. Corrupt conduct, etc., by election official.

If any manager, clerk, or any other officer whatever, assisting or engaged in conducting any election, or charged with any duty in reference to any election, shall designedly omit to do any official act required by law, or designedly do any illegal act in relation to any election, by which act or omission the votes taken at any such election in any district shall be lost, or the electors thereof shall be deprived of their suffrage at such election, or shall designedly do any act which shall render such election void, or shall be guilty of any corrupt conduct or partiality in his official capacity at such election, he shall, upon conviction, be imprisoned, in the county jail not more than one (1) year, or be fined not more than Three Thousand Dollars ($3,000.00), or both.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 6(9); 1857, ch. 64, art. 78; 1871, § 2542; 1880, § 3777; 1892, § 1049; 1906, § 1127; Hemingway's 1917, § 853; 1930, § 878; 1942, § 2104; Laws, 2016, ch. 430, § 7, eff from and after Jan. 1, 2017.

Cross References — Conviction of crime under this chapter as disqualification from serving on temporary municipal or county executive committees or county, municipal or state executive committees, see § 25-1-113.

JUDICIAL DECISIONS

1. In general.

This section applies to primary elections, as well as to general and special elections. Fanning v. State, 497 So. 2d 70, 1986 Miss. LEXIS 2645 (Miss. 1986).

An indictment charging an election officer with reporting a false account of the votes received by candidates at a primary election charged a felony covered by this section, and the state was not required to proceed on a misdemeanor count under former § 23-5-161. Fanning v. State, 497 So. 2d 70, 1986 Miss. LEXIS 2645 (Miss. 1986).

Sentence was neither excessive nor beyond the court's authority which required the defendant, who was convicted of a violation of this section, to serve 30 days in the county jail, perform 60 days of community work, pay costs of special election, and pay costs of trial, as conditions for the suspension of a one year sentence and 2 years of probation. Fanning v. State, 497 So. 2d 70, 1986 Miss. LEXIS 2645 (Miss. 1986).

RESEARCH REFERENCES

Am. Jur.

26 Am. Jur. 2d, Elections §§ 348 et seq.

CJS.

29 C.J.S., Elections §§ 540 et seq.

§ 97-13-21. Disturbing election.

If any person shall unlawfully disturb any election at a polling place, the office of the circuit clerk, or where ballots are located, such person shall be liable to indictment, and, on conviction, be imprisoned in the county jail not more than one (1) year, or be fined not more than One Thousand Dollars ($1,000.00), or both.

HISTORY: Codes, 1857, ch. 64, art. 72; 1871, § 2536; 1880, § 2771; 1892, § 1043; 1906, § 1121; Hemingway's 1917, § 847; 1930, § 872; 1942, § 2098; Laws, 2016, ch. 430, § 8, eff from and after Jan. 1, 2017.

Cross References — Conviction of crime under this chapter as disqualification from serving on temporary municipal or county executive committees or county, municipal or state executive committees, see § 25-1-113.

RESEARCH REFERENCES

Am. Jur.

26 Am. Jur. 2d, Elections §§ 348 et seq.

CJS.

29 C.J.S., Elections §§ 540 et seq.

§ 97-13-23. Failure or refusal to make return of votes cast.

If any manager or returning officer shall fail or refuse to make return of the votes cast in any election, as required of him, he shall, on conviction, be imprisoned in the State Penitentiary not more than two (2) years, or be fined not more than Three Thousand Dollars ($3,000.00), or both; or in a county jail not more than one (1) year, or be fined not more than One Thousand Dollars ($1,000.00), or both.

HISTORY: Codes, 1880, § 2781; 1892, § 1052; 1906, § 1130; Hemingway's 1917, § 856; 1930, § 881; 1942, § 2107; Laws, 2016, ch. 430, § 9, eff from and after Jan. 1, 2017.

Cross References — Constitutional provision for returns of all elections, see Miss Const Art. 4, § 114.

Conviction of crime under this chapter as disqualification from serving on temporary municipal or county executive committees or county, municipal or state executive committees, see § 25-1-113.

§ 97-13-25. Registration; falsely procuring registration.

Any person who shall knowingly procure his or any person's registration as a qualified elector, when the person whose registration is being procured is not entitled to be registered as such, or under a false name, or as a qualified elector in any other election precinct than that in which he or she resides, shall, on conviction, be imprisoned in the State Penitentiary for a term not to exceed five (5) years, or be fined not more than Five Thousand Dollars ($5,000.00), or both.

HISTORY: Codes, 1880, § 113; 1892, § 1042; 1906, § 1120; Hemingway's 1917, § 846; 1930, § 871; 1942, § 2097; Laws, 2016, ch. 430, § 10, eff from and after Jan. 1, 2017.

Cross References — Constitutional provisions for voter registration, see Miss Const Art. 12, § 242.

Reporting and investigation of false registration, see § 23-15-17.

Conviction of crime under this chapter as disqualification from serving on temporary municipal or county executive committees or county, municipal or state executive committees, see § 25-1-113.

Bribery in elections, see §§ 97-13-1, 97-13-3.

RESEARCH REFERENCES

Am. Jur.

26 Am. Jur. 2d, Elections §§ 349.

§ 97-13-27. Registration; neglect or misconduct by registrar.

If any registrar appointed by law to register votes shall intentionally refuse or neglect to register any voter entitled to registration, or register any voter not entitled to registration, he shall be punished, on conviction, be imprisoned in the State Penitentiary not more than two (2) years, or be fined not more than Three Thousand Dollars ($3,000.00), or both; or in a county jail not more than one (1) year, or be fined not more than One Thousand Dollars ($1,000.00), or both.

HISTORY: Codes, 1871, § 2546; 1880, § 2977; 1892, § 1056; 1906, § 1134; Hemingway's 1917, § 860; 1930, § 885; 1942, § 2111; Laws, 2016, ch. 430, § 11, eff from and after Jan. 1, 2017.

Cross References — Conviction of crime under this chapter as disqualification from serving on temporary municipal or county executive committees or county, municipal or state executive committees, see § 25-1-113.

§ 97-13-29. Troops of armed men not to be brought near election place.

It shall not be lawful for any military officer or other persons to order, bring, or keep any troops of armed men at any place within a mile of the place where any election is held, unless it be for the purpose of quelling a riot or insurrection, in the manner provided by law, or for the purpose of defense in time of war; and whoever shall violate the provisions of this section shall, on conviction, be imprisoned in the county jail not more than one (1) year, or be fined not more than One Thousand Dollars ($1,000.00), or both.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 6(11); 1857, ch. 64, art. 79; 1871, § 2543; 1880, § 2778; 1892, § 1050; 1906, § 1128; Hemingway's 1917, § 854; 1930, § 879; 1942, § 2105; Laws, 2016, ch. 430, § 12, eff from and after Jan. 1, 2017.

Cross References — Statutory definition of term "insurrection," see § 1-3-23.
Conviction of crime under this chapter as disqualification from serving on temporary municipal or county executive committees or county, municipal or state executive committees, see § 25-1-113.

§ 97-13-31. Voting; aid in preparing ballot prohibited.

If any election officer or other person, except as authorized by law, shall aid or assist, or influence, a voter in preparing a ballot, or shall attempt so to do, he or she shall, on conviction, be imprisoned in the county jail not more than one (1) year, or be fined not more than One Thousand Dollars ($1,000.00), or both.

HISTORY: Codes, 1892, § 1055; 1906, § 1133; Hemingway's 1917, § 859; 1930, § 884; 1942, § 2110; Laws, 2016, ch. 430, § 13, eff from and after Jan. 1, 2017.

Cross References — Conviction of crime under this chapter as disqualification from serving on temporary municipal or county executive committees or county, municipal or state executive committees, see § 25-1-113.

§ 97-13-33. Voting; dishonest decisions by managers concerning qualifications of voters.

When one who offers to vote at an election shall be objected to by any challenger as a person unqualified to vote, if the manager of such election shall permit him to vote without honestly considering his qualifications, or if any manager shall refuse the vote of such person without honestly considering his qualifications, or if any manager shall knowingly permit an unqualified person to vote, or shall knowingly refuse the vote of a qualified person, he shall, upon conviction, be imprisoned in the county jail not more than one (1) year, or be fined not more than Three Thousand Dollars ($3,000.00), or both.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 6(8); 1857, ch. 64, art. 77; 1871, § 2541; 1880, § 2776; 1892, § 1048; 1906, § 1126; Hemingway's 1917, § 852; 1930, § 877; 1942, § 2103; Laws, 2016, ch. 430, § 14, eff from and after Jan. 1, 2017.

Cross References — Conviction of crime under this chapter as disqualification from serving on temporary municipal or county executive committees or county, municipal or state executive committees, see § 25-1-113.

JUDICIAL DECISIONS

1. Sufficiency of evidence.

There was sufficient evidence with which to convict defendant of commercial burglary where a police officer saw a black man with the same build as defendant, who, like defendant, was driving a Lexus, wearing a black outfit (including a black cap), and carrying a black jacket. The man broke and entered a store at night and stole change from the register tills, and defendant was found shortly after the store break-in with more than $ 25 in change. Roche v. State, 913 So. 2d 306, 2005 Miss. LEXIS 257 (Miss. 2005).

RESEARCH REFERENCES

Am. Jur.

26 Am. Jur. 2d, Elections §§ 340-342, 344, 345 et seq.

§ 97-13-35. Voting; by unqualified person, or at more than one place, or for both parties in same primary.

(1) Any person who shall vote at any election, not being legally qualified, or who shall vote in more than one (1) county, or at more than one (1) place in any county or in any city, town, or village entitled to separate representation, or who shall vote out of the district of his legal domicile, or who shall vote or attempt to vote in the primary election of one (1) party when he shall have voted on the same date in the primary election of another party, shall, upon conviction, be imprisoned in the county jail not more than one (1) year, or be fined not more than One Thousand Dollars ($1,000.00), or both.

(2) Any person who shall vote in the second primary election of one (1) party when he voted in the first primary election of another party preceding the same regular, special, or general election shall, upon conviction, be guilty of a misdemeanor and be imprisoned in the county jail not more than six (6) months, or be fined not more than Five Hundred Dollars ($500.00), or both.

HISTORY: Codes, 1857, ch. 64, art. 73; 1871, § 2537; 1880, § 2772; 1892, § 1044; 1906, § 1122; Hemingway's 1917, § 848; 1930, § 873; 1942, § 2099; Laws, 1964, ch. 348; Laws, 2016, ch. 430, § 15, eff from and after Jan. 1, 2017.

Cross References — Conviction of crime under this chapter as disqualification from serving on temporary municipal or county executive committees or county, municipal or state executive committees, see § 25-1-113.

Bribery in elections, see §§ 97-13-1, 97-13-3.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

Residence and domicil under state's election laws are synonymous. Hubbard v. McKey, 193 So. 2d 129, 1966 Miss. LEXIS 1277 (Miss. 1966).

Phrase, "at any election," includes municipal elections. Sample v. Verona, 94 Miss. 264, 48 So. 2, 1908 Miss. LEXIS 1 (Miss. 1908).

OPINIONS OF THE ATTORNEY GENERAL

A voter who cast an absentee ballot in one party's primary may not lawfully cast a regular ballot in another party's primary. Dill, July 29, 2003, A.G. Op. 03-0363.

RESEARCH REFERENCES

Am. Jur.

26 Am. Jur. 2d, Elections §§ 340-342, 344, 355.

CJS.

29 C.J.S., Elections §§ 540 et seq.

§ 97-13-36. Multiple voting; penalties.

Any person who shall knowingly vote at any election in more than one (1) county or at more than one (1) place in any county, municipality or other political subdivision with the intent to have more than one (1) vote counted in any election shall be guilty of the crime of multiple voting and, upon conviction, shall be imprisoned in the State Penitentiary not more than five (5) years, or be fined not more than Five Thousand Dollars ($5,000.00), or both; or in a county jail not more than one (1) year, or be fined not more than One Thousand Dollars ($1,000.00), or both.

HISTORY: Laws, 2002, ch. 590, § 2; Laws, 2016, ch. 430, § 16, eff from and after Jan. 1, 2017.

Editor's Notes — The United States Attorney General, by letter dated July 22, 2002, interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2002, ch. 590, § 2.

Cross References — Conviction of crime under this chapter as disqualification from serving on temporary municipal or county executive committees or county, municipal or state executive committees, see § 25-1-113.

§ 97-13-37. Intimidating, boycotting, etc., elector to procure vote.

Whoever shall procure, or endeavor to procure, the vote of any elector, or the influence of any person over other electors, at any election, for himself or any candidate, by means of violence, threats of violence, or threats of withdrawing custom, or dealing in business or trade, or of enforcing the payment of a debt, or of bringing a suit or criminal prosecution, or by any other threat or injury to be inflicted by him, or by his means, or shall violate any provision of Section 23-15-871 or 23-15-874, shall, upon conviction, be imprisoned in the county jail not more than one (1) year, or be fined not more than Three Thousand Dollars ($3,000.00), or both.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 6 (4); 1857, ch. 64, art. 39; 1871, § 2516; 1880, § 2732; 1892, § 986; 1906, § 1062; Hemingway's 1917, § 790; 1930, § 806; 1942, § 2032; Laws, 2016, ch. 430, § 17, eff from and after Jan. 1, 2017.

Cross References — Violation of § 23-15-871, which prohibits corporations, officers, members of firm, trustee or member of association or any other employee from directing or coercing employees to vote or not to vote for any particular candidate, constitutes violation of this section, see § 23-15-871.

Violation of § 23-15-873, which prohibits persons from making promises of public positions or employment, public contracts, or public expenditures to promote his or her candidacy, constitutes violation of this section, see § 23-15-873.

Conviction of crime under this chapter as disqualification from serving on temporary municipal or county executive committees or county, municipal or state executive committees, see § 25-1-113.

Bribery in elections, see §§ 97-13-1, 97-13-3.

Intimidating elector to prevent vote, see § 97-13-39.

RESEARCH REFERENCES

Am. Jur.
12 Am. Jur. 2d, Bribery §§ 1 et seq.
26 Am. Jur. 2d, Elections § 350.

CJS.
11 C.J.S., Bribery §§ 1 et seq.
29 C.J.S., Elections §§ 551, 554 and 555.

§ 97-13-39. Intimidating elector to prevent voting.

(1) If any person shall, by illegal force, or threats of force, prevent, or endeavor to prevent, any elector from giving his vote, he shall, upon conviction, be imprisoned in the county jail not more than one (1) year, or be fined not more than Three Thousand Dollars ($3,000.00), or both.

(2) If any person shall, utilize the requirements to provide voter identification to intimidate a voter, or to prevent a person from voting who is otherwise qualified to vote shall, upon conviction, be imprisoned in the State Penitentiary not more than five (5) years, or fined not more than Five Thousand Dollars ($5,000.00), or both.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 6 (12); 1857, ch. 64, art. 80; 1871, § 2544; 1880, § 2779; 1892, § 1051; 1906, § 1129; Hemingway's 1917, § 855; 1930, § 880; 1942, § 2106; Laws, 2016, ch. 430, § 18, eff from and after Jan. 1, 2017.

Cross References — Conviction of crime under this chapter as disqualification from serving on temporary municipal or county executive committees or county, municipal or state executive committees, see § 25-1-113.

Intimidating elector to procure vote, see § 97-13-37.

RESEARCH REFERENCES

Am. Jur.
26 Am. Jur. 2d, Elections § 350.

CJS.
29 C.J.S., Elections § 551.

§ 97-13-41. Penalty for false entry, unauthorized revision, removal or alteration in Statewide Elections Management System or poll book.

Any person who shall knowingly make a false entry, unauthorized revision, removal, or alteration in the Statewide Elections Management System or poll book, shall, upon conviction thereof, be imprisoned in the State Penitentiary for a term not exceeding ten (10) years, and be liable to the action of the aggrieved party.

HISTORY: Laws, 2016, ch. 430, § 19, eff from and after Jan. 1, 2017.

§ 97-13-43. Penalty for willfully tampering with or damaging voting machine, tabulating computer or other device used in connection with election or preventing correct operation of said machine or device.

Any person who willfully tampers with or damages any voting machine or tabulating computer or device to be used or being used at or in connection with any election or who prevents or attempts to prevent the correct operation of any voting machine or tabulating computer or device shall be guilty of a felony and, upon conviction, be punished by imprisonment for not more than ten (10) years, or be fined Five Thousand Dollars ($5,000.00), or both.

HISTORY: Laws, 2016, ch. 430, § 20, eff from and after Jan. 1, 2017.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

§ 97-13-45. Penalty for unlawfully showing ballot to another, making false statement as to inability to mark ballot, or marking ballot so as to identify voter.

Any voter who shall, except as provided by law, allow his ballot to be seen by any person, or who shall make a false statement as to his inability to mark his ballot, or who shall place any mark upon his ballot by which it can afterwards be identified as the ballot voted by him, shall be punished by a fine of not less than Twenty-five Dollars ($25.00) nor more than One Hundred Dollars ($100.00).

HISTORY: Laws, 2016, ch. 430, § 21, eff from and after Jan. 1, 2017.

CHAPTER 15.

OFFENSES AFFECTING HIGHWAYS, FERRIES AND WATERWAYS

Sec.

97-15-1. Destroying, defacing, etc., milepost, signboard, etc., or bridge, underpass or overpass prohibited; penalties; liability for cost of repair; liability of parents of minor.
97-15-3. Highway commission members and employees; bribery.
97-15-5. Highway commission members, employees or highway contractors; conspiracy to violate contracts and defraud state.
97-15-7 and 97-15-9. Repealed.
97-15-11. Highway contractors, materialmen, etc.; collusion to raise prices.
97-15-13. Hunting or shooting on or across streets and highways; shooting, etc., at traffic control devices.
97-15-15. Keeper of ferry, toll-bridge or causeway; charging excessive toll.
97-15-17. Keeper of ferry, toll-bridge or causeway; failure to give bond; suffering bridge, etc. to be out of order.
97-15-19. Keeper of ferry, toll-bridge or causeway; unreasonable detention of person.
97-15-21. Levees; breaking enclosures; depositing trash, etc., or storing commodities; damaging.
97-15-23. Levees; disfiguring, etc., or excavating dirt or sand on levee right-of-way.
97-15-25. Levees; maliciously cutting, destroying, etc.
97-15-27. Levees; hunting or engaging in target practice upon mainline levee structure or right-of-way.
97-15-29. Littering highways and private property with trash or substance likely to cause fire; civil liability; fines; disposition of proceeds.
97-15-30. Penalties for unauthorized dumping of solid wastes; “commercial purpose” defined.
97-15-31. Littering highways, streets, sidewalks, etc. with tacks, glass or other damaging objects.
97-15-32. Dumping of dead wildlife, wildlife parts or waste in or on highways, private property, lakes, navigable waters, etc.; penalties.
97-15-33. Obstructing, injuring, destroying bridge, causeway or ferry.
97-15-35. Obstructing or injuring plank-road, covered, or other roads.
97-15-37. Obstructing public highway.
97-15-39. Obstructing waterways; felling tree or bush into stream or canal or obstructing in any way.
97-15-41. Obstructing waterways; felling trees in excess of six inches in diameter into running stream.
97-15-43. Obstructing waterways; navigable channel.
97-15-45. Obstructing waterways; permanently obstructing navigable waters.
97-15-47. Road overseers; refusing or neglecting duty.
97-15-49. Road overseers; suffering road to remain out of repair.
97-15-51. Corporation convicted for failure to keep road, etc., in repair; consequences of failure to pay fine.

§ 97-15-1. Destroying, defacing, etc., milepost, signboard, etc., or bridge, underpass or overpass prohibited; penalties; liability for cost of repair; liability of parents of minor.

(1) Any person who shall willfully destroy, deface, mar, damage, pull down

or remove any milepost, signboard, or index board, or road number, or railroad crossing sign or flasher signal, or other traffic control device shall, on conviction thereof, be liable for the actual cost of replacing or repairing such sign and shall be fined not less than Two Hundred Dollars ($200.00) nor more than Five Hundred Dollars ($500.00), or be imprisoned in the county jail not more than six (6) months, or be punished by both such fine and imprisonment. If the offender is a minor, the parents of such minor shall be civilly liable in accordance with Section 93-13-2 for the actual cost of replacing or repairing the sign, signal or device.

(2) The penalties prescribed in subsection (1) of this section shall also be applicable to any person, and to the parents of any minor, who willfully defaces, mars or damages any bridge, underpass or overpass.

HISTORY: Codes, Hutchinson's 1848, ch. 10. art. 7(19); 1857, ch. 64, art. 159; 1871, § 2622; 1880, § 2870; 1892, § 1144; 1906, § 1222; Hemingway's 1917, § 952; 1930, § 979; 1942, § 2209; Laws, 1977, ch. 323, § 2; Laws, 1993, ch 483, § 2, eff from and after July 1, 1993.

Cross References — Protection of road signs, see §§ 65-7-21 et seq.

§ 97-15-3. Highway commission members and employees; bribery.

Whoever being a member of the state highway commission, or any engineer, agent, or other employee, acting for or on behalf of the commission, shall accept, or agree to accept, receive or agree to receive, ask or solicit, either directly or indirectly, and any person who shall give or offer to give, or promise or procure to be promised, offered or given, either directly or indirectly to any member of said commission, or to any engineer, agent, or other employee acting for and on behalf of the commission, any monies, or any contract, promise, undertaking, obligation, gratuity or security for the payment of money, or for the delivery or conveyance of anything of value or of any political appointment or influence, present, or reward of any employment or any other thing of value, with the intent to have his decision or action on any question, matter, cause or proceeding which may at the time be pending, or which may by law be brought before him in his official capacity or in his place of trust or profit, influence thereby, shall be deemed guilty of a felony, and upon conviction, shall be imprisoned in the penitentiary not less than one nor more than five years, and shall forever after be disqualified from holding any office of trust or profit under the constitution or laws of this state.

HISTORY: Codes, 1930, § 5017; 1942, § 8049; Laws, 1930, ch. 47; Laws, 1948, ch. 332, § 26.

Editor's Notes — Section 65-1-1 provides that whenever the term "State Highway Commission," or the term "commission" meaning the State Highway Commission, appears in the laws of this state, it shall mean the Mississippi Transportation Commission.

Cross References — White-collar crime investigation, see § 7-5-59.

Bribery of public officers, generally, see §§ 97-11-11, 97-11-13.

RESEARCH REFERENCES

ALR.
Criminal offense of bribery as affected by lack of authority of state public officer or employee. 73 A.L.R.3d 374.

Am. Jur.
12 Am. Jur. 2d, Bribery §§ 1 et seq.

CJS.
11 C.J.S., Bribery §§ 1 et seq.

§ 97-15-5. Highway commission members, employees or highway contractors; conspiracy to violate contracts and defraud state.

Any member of the state highway commission or any person employed by the state highway commission, in connection with the carrying on of the work outlined in Title 65, Mississippi Code of 1972, who shall knowingly perform any act with intent to injure the state, or any contractor or his agent, or employee, or any other person, who shall conspire with the director or with any member of the state highway commission, or employee thereof or with any state official, to permit a violation of any contract with intent to injure or defraud the state, or any contractor or agent, or employee of any contractor who shall knowingly do any work on any state highway in violation of contract, and with intent to defraud the state, the member of the state highway commission, or employee thereof, state official or contractor, or employee or agent of such contractor, or any other person so conspiring or so doing, shall be guilty of a felony, and, upon conviction thereof shall be confined in the state penitentiary not less than one year, nor more than five years, or be fined not less than one thousand dollars ($1,000.00) and not more than five thousand dollars ($5,000.00) or both. In addition, any such person shall be liable to the state highway commission for double the amount the state may have lost by reason thereof, such liability to be covered by any bond that may have been executed by such official, contractor, or employee, the liability hereunder of the bondsmen, however, being limited to the total amount of said bond and not more.

HISTORY: Codes, 1930, § 5016; 1942, § 8048; Laws, 1930, ch. 47; Laws, 1948, ch. 332, § 25.

Editor's Notes — Section 65-1-1 provides that whenever the term "State Highway Commission," or the term "commission" meaning the State Highway Commission, appears in the laws of this state, it shall mean the Mississippi Transportation Commission.

Cross References — White-collar crime investigation, see § 7-5-59.

Conspiracy, generally, see § 97-1-1.

Conspiracy to defraud state, see §§ 97-7-11 et seq.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

RESEARCH REFERENCES

Am. Jur.
16 Am. Jur. 2d, Conspiracy §§ 1 et seq.
22 Am. Jur. 2d, Damages §§ 207, 226, 227.

CJS.
15A C.J.S., Conspiracy §§ 94-96, 98-102, 104.

§§ 97-15-7 and 97-15-9. Repealed.

Repealed by Laws, 1990, ch. 306, § 1, eff from and after May 4, 1990 (the date the United States Attorney General interposed no objection to the repeal of this section).

§ 97-15-7. [Codes, 1930, § 5019; 1942, § 8051; Laws, 1930, ch. 47; Laws, 1948, ch. 332, § 28]

§ 97-15-9. [Codes, 1930, § 5020; 1942, § 8052; Laws, 1930, ch. 47; Laws, 1948, ch. 332, § 29]

Editor's Notes — Former § 97-15-7 was entitled: Highway commissioner; candidates for office not to accept campaign contributions, etc. from road builders.

Former § 97-15-9 was entitled: Highway contractors, materialmen, etc; campaign contributions, etc., to candidates for highway commissioner prohibited.

§ 97-15-11. Highway contractors, materialmen, etc.; collusion to raise prices.

It shall be unlawful for any contractors, material dealers, individuals, manufacturers, producers, or corporations, to enter into collusion, private agreement, or secret understanding, to raise the price of construction work or of equipment, supplies or materials for any state highway work. Any contractor, material dealer, manufacturer, producer or their agent or employee, or officer, agent or employee of any corporation, convicted of this offense shall be punishable by a fine of not to exceed five thousand dollars ($5,000.00) or by imprisonment not exceeding twelve months, or by both such fine and imprisonment, in the discretion of the court.

HISTORY: Codes, 1930, § 5018; 1942, § 8050; Laws, 1930, ch. 47; Laws, 1948, ch. 332, § 27.

Cross References — Conspiracy to defraud state, see §§ 97-7-11 et seq.

RESEARCH REFERENCES

Am. Jur.
16 Am. Jur. 2d, Conspiracy §§ 1 et seq.

CJS.
15A C.J.S., Conspiracy §§ 279-285.

§ 97-15-13. Hunting or shooting on or across streets and highways; shooting, etc., at traffic control devices.

(1)(a) The provisions of this subsection shall only be applicable during the calendar days included in the open seasons on deer and turkey.

(b) It shall be unlawful for any person to hunt, if such person is in the possession of a firearm that is not unloaded on any street, public road, public highway, levee, or any railroad which is maintained by any railroad corporation, city, county, levee board, state or federal entity or the right-of-way of any such street, road, highway, levee or railroad.

(c) The provisions of this subsection shall not apply to any person engaged in a lawful action to protect his property or livestock.

(2) For purposes of this section, the following terms shall have the meanings ascribed to them herein:

(a) "Right-of-way" means that part of a street, public road, public highway, levee or railroad maintained by a city, county, levee board, state or federal entity or railroad corporation and including that portion up to the adjacent property line or fence line.

(b) "Motorized vehicle" means any vehicle powered by any type of motor, including automobiles, farm vehicles, trucks, construction vehicles and all-terrain vehicles.

(c) "Firearm" means any firearm other than a handgun.

(d) "Hunt" or "hunting" means to hunt or chase or to shoot at or kill or to pursue with the intent to take, kill or wound any wild animal or wild bird with a firearm as defined in this subsection.

(e) "Unloaded" means that a cartridge or shell is not positioned in the barrel or magazine of the firearm or in a clip, magazine or retainer attached to the firearm; or in the case of a caplock muzzle-loading firearm, "unloaded" means that the cap has been removed; or in the case of a flintlock muzzle-loading firearm, "unloaded" means that all powder has been removed from the flashpan.

(3) If any person hunts or discharges any firearm in, on or across any street, public road, public highway, levee, railroad or the right-of-way thereof, such person is guilty of a misdemeanor and, upon conviction, shall be punished by a fine not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00) or by imprisonment in the county jail for not less than sixty (60) days nor more than six (6) months, or by both such fine and imprisonment. This subsection shall not apply to any law enforcement officer while in the performance of his official duty or to any person engaged in a lawful action of self-defense.

(4) If any person shall willfully shoot any firearms or hurl any missile at any street, highway or railroad traffic light; street, highway or railroad marker or other sign for the regulation or designation of street, highway or railroad travel such person, upon conviction, shall be fined not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00), or be imprisoned not longer than thirty (30) days in the county jail, or both.

(5) It shall be the duty of all sheriffs, deputy sheriffs, constables, conservation officers and peace officers of this state to enforce the provisions of this section.

(6) If any subsection, paragraph, sentence, clause, phrase or any part of this section is hereafter declared to be unconstitutional or void, or if for any

reason is declared to be invalid or of no effect, the remaining subsections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no manner affected thereby but shall remain in full force and effect.

HISTORY: Codes, 1857, ch. 64, art. 365; 1871, § 2870; 1880, § 2941; 1892, § 1148; 1906, § 1226; Hemingway's 1917, § 956; 1930, § 983; 1942, § 2213; Laws, 1964, ch. 349; Laws, 1971, ch. 443, § 1; Laws, 1974, ch. 569, § 23; Laws, 1982, ch. 454; Laws, 1985, ch. 452, § 17; Laws, 1990, ch. 528, § 1; Laws, 2008, ch. 386, § 1; Laws, 2012, ch. 341, § 1, eff from and after July 1, 2012.

Cross References — Authority of conservation officers of Commission on Wildlife, Fisheries and Parks to apprehend violators, see § 49-1-44.

Penalties for conviction of Class II violation, see § 49-7-143.

Rates of travel over bridges, see § 65-7-41.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

That part of this section which reads "unless permission is granted within the county wherein Highway 15 and I20 intersect" is unconstitutional and should be stricken from the act; the remaining portion of the statute is constitutional. The 1974 amendment to the statute limits the violation to streets, public highways and railroads within the boundaries of hunting clubs in the state, and the law previous thereto making it a violation to hunt or race on, or shoot on or across any street or public highway in the state of Mississippi has been completely changed. Quinn v. Branning, 404 So. 2d 1018, 1981 Miss. LEXIS 2146 (Miss. 1981).

Conviction of shooting in public highways will not be reversed for defects in affidavit, amendable on demurrer. Evans v. State, 92 Miss. 34, 45 So. 706, 1907 Miss. LEXIS 24 (Miss. 1907).

An indictment is good which charges that the defendant shot on a public highway. Woods v. State, 67 Miss. 575, 7 So. 495, 1890 Miss. LEXIS 110 (Miss. 1890).

OPINIONS OF THE ATTORNEY GENERAL

Section 49-7-49 should not be used to replace subsection (1) of this section during closed seasons on deer and turkey; Section 49-7-49 would apply to this section in cases whereby suspect was in possession of dead bodies of wild birds or wild animals while on public highways, at which time it would be prima facie evidence that such person was hunting. Breland, June 9, 1993, A.G. Op. #93-0376.

RESEARCH REFERENCES

ALR.

Liability of public authority for injury arising out of automobile race conducted on street or highway. 80 A.L.R.3d 1192.

CJS.

40 C.J.S., Highways §§ 322-326.

§ 97-15-15. Keeper of ferry, toll-bridge or causeway; charging excessive toll.

Any keeper of any public ferry, toll-bridge, or causeway, who shall demand or receive from any person any rate of toll not allowed by the order of the board of supervisors of the county in which the same may be kept, shall, for each offense, on conviction thereof, be fined not more than fifty dollars.

HISTORY: Codes, Hutchinson's 1848, ch. 10, art. 7(38); 1857, ch. 64, art. 155; 1871, § 2618; 1880, § 2865; 1892, § 1139; 1906, § 1217; Hemingway's 1917, § 947; 1930, § 974; 1942, § 2204.

Cross References — Keepers of toll bridges and ferries, see §§ 65-21-9, 65-27-5.

Displaying tables of rates of tolls, see § 65-27-17.

RESEARCH REFERENCES

Am. Jur.

35A Am. Jur. 2d, Ferries § 55, 56.

40 Am. Jur. 2d, Highways, Streets, and Bridges §§ 692 et seq., 701.

CJS.

11 C.J.S., Bridges § 70.

36A C.J.S., Ferries § 34.

§ 97-15-17. Keeper of ferry, toll-bridge or causeway; failure to give bond; suffering bridge, etc. to be out of order.

If any owner or keeper of a public ferry, toll-bridge, or causeway, shall fail to give bond as required by law, or shall suffer said ferry, bridge, or causeway, or any part or appurtenance thereof, to be out of good repair for more than five days at any one time, such owner or keeper, or both, shall, on conviction thereof, be fined not more than fifty dollars.

HISTORY: Codes, Hutchinson's 1848, ch. 10, art. 7(39); 1857, ch. 64, art. 156; 1871, § 2619; 1880, § 2866; 1892, § 1140; 1906, § 1218; Hemingway's 1917, § 948; 1930, § 975; 1942, § 2205.

Cross References — Bond of keepers of toll bridges and ferries, see §§ 65-21-9, 65-27-5.

Displaying rates of tolls, see § 65-27-17.

RESEARCH REFERENCES

Am. Jur.

39 Am. Jur. 2d, Highways, Streets, and Bridges § 85.

CJS.

11 C.J.S., Bridges § 56.

40 C.J.S., Highways §§ 213, 218.

§ 97-15-19. Keeper of ferry, toll-bridge or causeway; unreasonable detention of person.

If any person shall be unreasonably detained, at any time, at any public ferry, toll-bridge, or causeway, by the carelessness, negligence, or wilfulness of the owner or keeper thereof, such owner or keeper, upon conviction, shall be fined not more than fifty dollars.

HISTORY: Codes, Hutchinson's 1848, ch. 10, art. 7(36); 1857, ch. 64, art. 154; 1871, § 2617; 1880, § 2864; 1892, § 1138; 1906, § 1216; Hemingway's 1917, § 946; 1930, § 973; 1942, § 2203.

Cross References — Toll bridges and ferries, see §§ 65-21-7 et seq.
Ferries, generally, see §§ 65-27-1 et seq.
Duties of ferrymen, see § 65-27-15.

RESEARCH REFERENCES

Am. Jur.
40 Am. Jur. 2d, Highways, Streets, and Bridges § 701.

CJS.
36A C.J.S., Ferries § 34.

§ 97-15-21. Levees; breaking enclosures; depositing trash, etc., or storing commodities; damaging.

If any person shall willfully cut, break down, remove, destroy or damage any cattle gap or any fence or part thereof erected by any board of levee commissioners or the agents or employees of said board of levee commissioners for the purpose of enclosing any levee right-of-way under the control of said board of levee commissioners or who shall break down, remove or destroy any gate in any such fence, or shall willfully leave unclosed and open any such gate after having opened same, or make said levee or said levee right-of-way a place of deposit or storage for any woodpiles or refuse, garbage or dead animals or any cotton, lumber, bricks or any other commodities, or who shall willfully do any material damage injurious to said levee, such person or persons shall be guilty of a misdemeanor and, on conviction, shall be fined not less than One Hundred Dollars ($100.00) nor more than One Thousand Dollars ($1,000.00) for each offense. In addition to the penalties herein provided for, if any levee board is required to remove any such forbidden objects herein described, the owner or owners of such forbidden objects shall be liable in damages to the levee board for the cost of removing such objects, which damages may be recovered in a court action brought for that purpose; and the said levee board shall have a right of action against any person for any other damage sustained to the levee or levee right-of-way by reason of a violation of this section.

HISTORY: Codes, Hemingway's 1917, § 1006; 1930, § 1035; 1942, § 2267; Laws, 1906, ch. 126; Laws, 1948, ch. 357; Laws, 1968, ch. 353, § 1; Laws, 1999, ch. 433, § 1; Laws, 2008, ch. 386, § 2, eff from and after July 1, 2008.

Cross References — Authority of conservation officers of Commission on Wildlife, Fisheries and Parks to apprehend violators, see § 49-1-44.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am. Jur.
50 Am. Jur. 2d, Levees and Flood Control §§ 1 et seq.

CJS.
52B C.J.S., Levees and Flood Control § 25.

§ 97-15-23. Levees; disfiguring, etc., or excavating dirt or sand on levee right-of-way.

If any person or persons shall willfully cut into, mutilate or disfigure any levee or excavate dirt or sand from the right-of-way owned by any board of levee commissioners or any part thereof, or trespass upon said levee in violation of posted regulations, without being authorized to do so by the said board of levee commissioners, such person or persons shall be guilty of a misdemeanor, and on conviction shall be fined not less than One Hundred Dollars ($100.00) nor more than One Thousand Dollars ($1,000.00) for each offense, or shall be confined in the county jail for a term not exceeding thirty (30) days, or by both such fine and imprisonment in the discretion of the court.

HISTORY: Codes, Hemingway's 1917, § 1005; 1930, § 1034; 1942, § 2266; Laws, 1906, ch. 129; Laws, 1979, ch. 395; Laws, 1999, ch. 433, § 2; Laws, 2008, ch. 386, § 3, eff from and after July 1, 2008.

Cross References — Authority of conservation officers of Commission on Wildlife, Fisheries and Parks to apprehend violators, see § 49-1-44.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am. Jur.
50 Am. Jur. 2d, Levees and Flood Control §§ 1 et seq.

CJS.
52B C.J.S., Levees and Flood Control § 25.

§ 97-15-25. Levees; maliciously cutting, destroying, etc.

If any person shall wilfully or maliciously cut, break, injure, or destroy any levee constructed by authority of law, he shall, on conviction, be imprisoned in the penitentiary not more than five years.

HISTORY: Codes, 1857, ch. 64, art. 198; 1871, § 2705; 1880, § 2914; 1892, § 1196; 1906, § 1274; Hemingway's 1917, § 1004; 1930, § 1033; 1942, § 2265.

Cross References — Authority of conservation officers of Commission on Wildlife, Fisheries and Parks to apprehend violators, see § 49-1-44.

RESEARCH REFERENCES

Am. Jur.
50 Am. Jur. 2d, Levees and Flood Control §§ 1 et seq.

CJS.
52B C.J.S., Levees and Flood Control § 25.

§ 97-15-27. Levees; hunting or engaging in target practice upon mainline levee structure or right-of-way.

If any person shall hunt or engage in target practice upon any levee structure erected by any board of levee commissioners, the entire landside right-of-way of the levee structure or the riverside right-of-way of the levee structure within a distance of two hundred (200) feet from the toe of the levee structure, the person or persons shall, upon conviction, be punished as provided in Section 49-7-141(1) for Class I violations of the game and fish laws.

HISTORY: Codes, 1942, § 2267.1; Laws, 1968, ch. 353, § 2; Laws, 1999, ch. 433, § 3; Laws, 2008, ch. 386, § 4; Laws, 2014, ch. 408, § 1, eff from and after July 1, 2014.

Cross References — Authority of conservation officers of Commission on Wildlife, Fisheries and Parks to apprehend violators, see § 49-1-44.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 97-15-29. Littering highways and private property with trash or substance likely to cause fire; civil liability; fines; disposition of proceeds.

(1) Anyone who shall put, throw, dump or leave on the roads and highways of this state, or within the limits of the rights-of-way of such roads and highways, or upon any private property, any cigarette or cigar stubs, or any other thing or substance likely to ignite the grass or underbrush on a road or highway, in addition to being civilly liable for all damages caused by such act shall, upon conviction, be guilty of a misdemeanor and punished as provided by subsection (3) of this section.

(2) The Department of Transportation is authorized to erect warning signs along the roads and highways of this state advising the public of the existence of this section and of the penalty for the violation thereof and is further authorized to install receptacles at reasonable intervals along the roads and highways of this state to be used as containers for trash and rubbish and for the convenience of the public using such roads and highways.

(3) Any person found guilty of the violation of this section shall, upon conviction, be fined not less than Fifty Dollars ($50.00) nor more than Two Hundred Fifty Dollars ($250.00). The proceeds of such fines shall be expended by the collecting jurisdiction solely for the purpose of funding local litter prevention programs or projects or local or school litter education programs as recommended by the statewide litter prevention program of Keep Mississippi Beautiful, Inc.

(4) As a part of the fine imposed by subsection (3) above, a person convicted for an offense upon which fines are imposed by this section may be required to perform the following, and a person convicted for a second or subsequent offense upon which fines are imposed by this section shall be required to:

(a) Remove or render harmless, in accordance with written direction, as appropriate, from the Department of Environmental Quality or local law enforcement authorities, the unlawfully discarded solid waste;

(b) Repair or restore property damaged by, or pay damages for any damage arising out of the unlawfully discarded solid waste;

(c) Perform community public service relating to the removal of any unlawfully discarded solid waste or to the restoration of any area polluted by unlawfully discarded solid waste; and

(d) Pay all reasonable investigative and prosecutorial expenses and costs to the investigative and/or prosecutorial agency or agencies.

(5) Upon a second or subsequent conviction of an offense upon which fines are imposed by this section, the minimum and maximum fines shall be doubled.

(6) When any litter is thrown or discarded from a motor vehicle, the operator of the motor vehicle shall be deemed in violation of this section.

(7) There shall be imposed and collected an assessment of Fifty Dollars ($50.00) on each violation of this section. The assessment shall be deposited into the Law Enforcement Officers Monument Fund created in Section 39-5-71. After the monument is constructed, the assessment shall not be deposited into the fund. The assessment shall then be deposited with the Postsecondary Education Financial Assistance Board to be used for the scholarship program for children of deceased or disabled law enforcement officers and firemen as provided by Section 37-106-39.

(8) It shall be the duty of all law enforcement officers to enforce the provisions of this section.

(9) This section shall not prohibit the storage of ties and machinery by a railroad on its right-of-way where the highway right-of-way extends to within a few feet of the railroad roadbed.

HISTORY: Codes, 1942, § 2214.5; Laws, 1956, ch. 243; Laws, 1958, ch. 238, §§ 1-8; Laws, 1964, ch. 350, §§ 1, 2 [¶¶ 1, 2]; Laws, 1973, ch. 351, § 1; Laws, 1988, ch. 574, § 3; Laws, 1990, ch. 329, § 13; Laws, 1991, ch. 531, § 24; Laws, 1994, ch. 543, § 3; Laws, 1995, ch. 500, § 1; Laws, 2000, ch. 421, § 1; Laws, 2007, ch. 509, § 1; Laws, 2012, ch. 554, § 7; Laws, 2014, ch. 538, § 43, eff from and after July 1, 2014.

Cross References — Requirement that trucks or other vehicles be covered when hauling solid waste, see §§ 17-17-11, 17-17-29.

Disposal of waste tires and lead acid batteries, and right-to-throw-away program, see §§ 17-17-401 et seq.

Highway safety patrol, see §§ 45-3-1 et seq.

Authority of conservation officers of Commission on Wildlife, Fisheries and Parks to apprehend violators, see § 49-1-44.

Department of Environmental Quality generally, see §§ 49-2-1 et seq.

Powers and duties of the highway commission, generally, see § 65-1-8.

Contract with Keep Mississippi Beautiful, Inc. for development of comprehensive statewide litter prevention program, see § 65-1-165.

Dumping of dead wildlife, wildlife parts or waste in or on highways, private property, lakes, navigable waters, etc., see § 97-15-32.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

OPINIONS OF THE ATTORNEY GENERAL

A violation of this section may be enforced with either a general affidavit or a citation ticket. Cruber, Mar. 28, 2003, A.G. Op. #03-0130.

RESEARCH REFERENCES

ALR.

Liability of highway user for injuries resulting from failure to remove or protect against material spilled from vehicle onto public street or highway. 34 A.L.R.4th 520.

Am. Jur.

40 Am. Jur. 2d, Highways, Streets, and Bridges §§ 668 et seq., 677.

§ 97-15-30. Penalties for unauthorized dumping of solid wastes; "commercial purpose" defined.

(1) For purposes of this section the term "commercial purpose" means for the purpose of economic gain.

(2)(a) Except as authorized by law or permit, it is unlawful for any person to throw, scatter, spill or place, or cause to be thrown, scattered, spilled, or placed, or otherwise disposed of, any solid waste in any of the following manners or amounts:

(i) In or on any public highway, road, street, alley or thoroughfare, including any portion of the right-of-way thereof, or any other public lands, except in containers or areas lawfully provided therefor. When any solid waste is thrown or discarded from a motor vehicle, the operator or owner of the motor vehicle, or both, shall be deemed in violation of this section;

(ii) In or on any waters of the state. When any solid waste is thrown or discarded from a vessel, the operator or owner of the boat, or both, shall be deemed in violation of this section; or

(iii) In or on any private property, unless prior written consent of the owner has been given and the solid waste will not cause a public nuisance or be in violation of any other state or local law, rule or regulation;

(iv) Raw human waste from any train, aircraft, motor vehicle or vessel upon the public or private lands or waters of the state.

(b) Nothing in this section shall prohibit acts authorized pursuant to Section 17-17-13.

(3)(a) Any person who violates this section in an amount not exceeding fifteen (15) pounds in weight or twenty-seven (27) cubic feet in volume and not for commercial purposes is guilty of littering and subject to a fine as provided in Section 97-15-29.

(b) Any person who violates this section in an amount exceeding fifteen (15) pounds or twenty-seven (27) cubic feet in volume, but not exceeding five hundred (500) pounds in weight or one hundred (100) cubic feet in volume and not for commercial purposes is guilty of a misdemeanor and subject to a fine of not less than One Hundred Dollars ($100.00), nor more than One Thousand Dollars ($1,000.00), or to imprisonment for a term of not more than one (1) year, or both.

(c) Any person who violates this section in an amount exceeding five hundred (500) pounds in weight or one hundred (100) cubic feet in volume, or in any amount or volume of solid waste for commercial purposes, or in any amount or volume of hazardous waste is guilty of a felony and subject to a fine of not less than Five Hundred Dollars ($500.00), nor more than Fifty Thousand Dollars ($50,000.00) or to imprisonment for a term of not more than five (5) years, or both. For purposes of the fine, each day shall constitute a separate violation.

(d) In addition to any other fines, penalties or injunctive relief prescribed by law, a person convicted under subsections (3)(b) or (3)(c) of this section shall:

(i) Remove or render harmless, in accordance with written direction from the Department of Environmental Quality, the unlawfully discarded solid waste;

(ii) Repair or restore property damaged by, or pay damages for any damage arising out of the unlawfully discarded solid waste;

(iii) Perform community public service relating to the removal of any unlawfully discarded solid waste or to the restoration of an area polluted by unlawfully discarded solid waste; and

(iv) Pay all reasonable investigative and prosecutorial expenses and costs to the investigative and/or prosecutorial agency or agencies.

(e) If a conviction under subsection (3) of this section is for a violation committed after a first conviction of that person under this section, the maximum punishment under the respective paragraphs shall be doubled with respect to both fine and imprisonment.

(4) A court may enjoin a violation of subsection (2) of this section.

(5) Any motor vehicle, vessel, aircraft, container, crane, winch, or machine used in a felony violation of this section may be seized with process or without process if a law enforcement officer has probable cause to believe that the property was used in violation of that section. The seized property shall be subject to an administrative and/or judicial forfeiture by the same standards and procedures provided under Sections 41-29-176 through 41-29-185.

(6) In the criminal trial of any person charged with violating subsection (2) of this section, the defendant must affirmatively show that he had authority to discard the solid waste.

(7) Any person who conspires to commit a violation of this section shall be punished in accordance with the underlying offense set forth in this section.

(8) It shall be the duty of all law enforcement officers to enforce the provisions of this chapter.

(9) All prosecutions for felony violations of this section shall be instituted only by the Attorney General, his designee, the district attorney of the district in which the violation occurred or his designee and shall be conducted in the name of the people of the State of Mississippi. In the prosecution of any criminal proceeding under this section by the Attorney General, or his designee, and in any proceeding before a grand jury in connection therewith, the Attorney General or his designee shall exercise all the powers and perform

all the duties which the district attorney would otherwise be authorized or required to exercise or perform. The Attorney General shall have the authority to issue and serve subpoenas for any felony violation in the same manner as prescribed under Section 7-5-59.

(10) Jurisdiction for all felony violations shall be in the circuit court of the county in which the violation occurred.

(11) Nothing in this section shall limit the authority of the department to enforce the provisions of the Solid Waste Disposal Law or shall limit the authority of any state or local agency to enforce any other laws, rules or ordinances.

(12) The Department of Transportation may erect warning signs along the roads and highways of this state advising the public of the existence of these sections and of the penalty for the violation thereof.

(13) This section shall not prohibit the storage of ties poles, other materials and machinery by a railroad or a public utility on its right-of-way. This section does not apply to any vehicle transporting agricultural products or supplies when the solid waste from that vehicle is a nontoxic, biodegradable agricultural product or supply.

(14) The Attorney General may pay an award, not to exceed Ten Thousand Dollars ($10,000.00) to any person who furnishes information or services that lead to a felony criminal conviction for any violation of this section. The payment shall be subject to available appropriations for those purposes as provided in annual appropriation acts. Any officer or employee of the United States or any state or local government who furnishes information or renders service in the performance of an official duty is ineligible for payment under this subsection.

HISTORY: Laws, 1994, ch. 543, § 1, eff from and after July 1, 1994.

RESEARCH REFERENCES

Am. Jur.
42 Am. Jur. 2d, Injunctions § 152.
61A Am. Jur. 2d, Pollution Control §§ 558 et seq.

§ 97-15-31. Littering highways, streets, sidewalks, etc. with tacks, glass or other damaging objects.

It shall be unlawful for any person, or corporation acting through any employee or agent, to knowingly or wilfully or carelessly place glass, nails, tacks, or other objects which may damage the property of another, in any public street, highway, alley-way, or sidewalk. If said person or corporation shall not immediately gather up and remove same, he or it shall be guilty of a misdemeanor, and upon conviction shall be fined not less than five dollars nor more than one hundred dollars for each offense, and in addition shall be liable to any person injured thereby, or injury to his property, for two times the amount of actual damage sustained.

HISTORY: Codes, Hemingway's 1921 Supp. § 1142i; 1930, § 984; 1942, § 2214; Laws, 1920, ch. 204.

Cross References — Authority of conservation officers of Commission on Wildlife, Fisheries and Parks to apprehend violators, see § 49-1-44.

Prohibition against obstruction of roads, see § 65-7-7.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

ALR.

Standard of proof as to conduct underlying punitive damage awards – modern status. 58 A.L.R.4th 878.

Am. Jur.

40 Am. Jur. 2d, Highways, Streets, and Bridges §§ 668 et seq., 677.

§ 97-15-32. Dumping of dead wildlife, wildlife parts or waste in or on highways, private property, lakes, navigable waters, etc.; penalties.

(1) Anyone who puts, throws or dumps on the streets, roads or highways within this state, or within the limits of the rights-of-way of such streets, roads or highways, or in the lakes, streams, rivers or navigable waters or upon any private property without permission of the owner of such property, any dead wildlife, wildlife parts or waste, in addition to being civilly liable for all damages caused by such act, upon conviction, shall be guilty of a misdemeanor and punished as provided in this section.

(2) Any person found guilty of the violation of this section shall, upon conviction, be fined not less than Two Hundred Dollars ($200.00) nor more than Four Hundred Dollars ($400.00).

(3) A person convicted for a first offense under this section may be required to perform the following, and a person convicted for a second or subsequent offense shall be required to:

(a) Remove the unlawfully discarded dead wildlife or waste;

(b) Restore property damaged by, or pay damages for any damage arising out of the unlawfully discarded dead wildlife or waste;

(c) Perform community public service relating to the removal of any unlawfully discarded dead wildlife or waste or to the restoration of any area polluted by unlawfully discarded dead wildlife or waste; and

(d) Pay all reasonable investigative and prosecutorial expenses and costs to the investigative and/or prosecutorial agency or agencies.

(4) It shall be the duty of all law enforcement officers to enforce the provisions of this section.

HISTORY: Laws, 2007, ch. 509, § 2, eff from and after July 1, 2007.

§ 97-15-33. Obstructing, injuring, destroying bridge, causeway or ferry.

If any person shall wilfully obstruct, break, injure, or destroy any bridge, causeway, or ferry, or any appurtenances thereof which shall have been established for the convenience of the public by the proper authority, he shall, on conviction, be fined not more than one hundred dollars, and shall be liable, further, for all damages occasioned by such wrongful act.

HISTORY: Codes, Hutchinson's 1848, ch. 10, art. 10(1); 1857, ch. 64, art. 157; 1871, § 2620; 1880, § 2867; 1892, § 1141; 1906, § 1219; Hemingway's 1917, § 949; 1930, § 976; 1942, § 2206.

Cross References — Prohibition against obstruction of roads and waterways, see § 65-7-7.

RESEARCH REFERENCES

Am. Jur.
40 Am. Jur. 2d, Highways, Streets, and Bridges §§ 678, 679.

CJS.
11 C.J.S., Bridges § 56.
40 C.J.S., Highways §§ 269, 270.

§ 97-15-35. Obstructing or injuring plank-road, covered, or other roads.

If any person shall wantonly or negligently obstruct or injure any plank-road, or any covered road, or other roads, on conviction thereof, he shall be fined not more than five hundred dollars, or imprisoned not longer than six months in the county jail, or both.

HISTORY: Codes, 1857, ch. 64, art. 163; 1871, § 2626; 1880, § 2873; 1892, § 1147; 1906, § 1225; Hemingway's 1917, § 955; 1930, § 982; 1942, § 2212.

Cross References — Prohibition against obstruction of roads and waterways, see § 65-7-7.

RESEARCH REFERENCES

Am. Jur.
40 Am. Jur. 2d, Highways, Streets, and Bridges §§ 678, 679.

CJS.
40 C.J.S., Highways §§ 269, 270.

§ 97-15-37. Obstructing public highway.

If any person shall fell any bush or tree into any public highway, or obstruct the same in any manner whatever, and shall not remove the obstruction immediately, it shall be deemed a misdemeanor, and, on conviction thereof the offender, in addition to the penalty recoverable by law, shall be fined not more than fifty dollars or be imprisoned not more than one week.

HISTORY: Codes, Hutchinson's 1848, ch. 10, art. 7(32); 1857, ch. 64, art. 160; 1871, § 2623; 1880, § 2871; 1892, § 1145; 1906, § 1223; Hemingway's 1917, § 953; 1930, § 980; 1942, § 2210.

Cross References — Prohibition against obstruction of roads and waterways, see § 65-7-7.

Another section derived from same 1942 code section, see § 97-15-39.

Intentional or wilful obstruction, or interference with use, of streets and highways, see §§ 97-35-23, 97-35-25.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

The prerequisites required by Code 1892, § 3892 (Code 1906, § 4400; Hemingway's Code 1927, § 8340), are essential to a valid petition, and a road laid out without them is no road and an obstruction to it no crime under this section [Code 1942, § 2210]. State v. Morgan, 79 Miss. 659, 31 So. 338, 1901 Miss. LEXIS 112 (Miss. 1901).

This section [Code 1942, § 2210] has no reference to a street in a municipality (Magers v. Okolona, H. & C. C. R. Co. 174 M 860, 165 So 416) even though the street had, prior to incorporation, been a public road. Blocker v. State, 72 Miss. 720, 18 So. 388, 1895 Miss. LEXIS 43 (Miss. 1895).

This section [Code 1942, § 2210] applies where the obstruction is caused by positive use of physical means; mere omission to repair a bridge is not within the section. Vicksburg & M. R. Co. v. State, 64 Miss. 5, 8 So. 128, 1886 Miss. LEXIS 2 (Miss. 1886).

RESEARCH REFERENCES

Am. Jur.

40 Am. Jur. 2d, Highways, Streets, and Bridges §§ 678, 679.

CJS.

40 C.J.S., Highways §§ 269, 270.

§ 97-15-39. Obstructing waterways; felling tree or bush into stream or canal or obstructing in any way.

If any person shall fell any bush or tree into a stream or canal not less than one hundred and fifty (150) feet wide, or obstruct the same in any way whatever, and shall not remove the obstruction immediately, it shall be deemed a misdemeanor, and, on conviction thereof, the offender, in addition to the penalty recoverable by law, shall be fined not more than fifty dollars or be imprisoned not more than one week.

HISTORY: Codes, Hutchinson's 1848, ch. 10, art. 7(32); 1857, ch. 64, art. 160; 1871, § 2623; 1880, § 2871; 1892, § 1145; 1906, § 1223; Hemingway's 1917, § 953; 1930, § 980; 1942, § 2210.

Cross References — Authority of conservation officers of Commission on Wildlife, Fisheries and Parks to apprehend violators, see § 49-1-44.

Obstruction of streams, see § 51-1-7.

Prohibition against obstruction of roads and waterways, see § 65-7-7.

Another section derived from same 1942 code section, see § 97-15-37.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

This section [Code 1942, § 2210] applies where the obstruction is caused by positive use of physical means; mere omission to repair a bridge is not within the section. Vicksburg & M. R. Co. v. State, 64 Miss. 5, 8 So. 128, 1886 Miss. LEXIS 2 (Miss. 1886).

RESEARCH REFERENCES

Am. Jur.

78 Am. Jur. 2d, Waters § 188.

CJS.

93 C.J.S., Waters §§ 19, 20.

Law Reviews.

Ogletree, A primer concerning industrial timber litigation with emphasis upon Mississippi law. 59 Miss. L. J. 387, Fall 1989.

§ 97-15-41. Obstructing waterways; felling trees in excess of six inches in diameter into running stream.

It shall be unlawful and a misdemeanor for any person, firm, corporation, association or organization to push, fell or cut trees, in excess of six (6) inches in diameter, into a running stream, or deposit or leave in a running stream, trees, in excess of six (6) inches in diameter, logs in excess of six (6) inches in diameter or tree tops, without removing the same immediately, in such cases where such will materially impede the flow of or navigation upon such running stream.

Any violation of this section shall be punishable by a fine of not less than twenty-five dollars ($25.00) and not more than two hundred dollars ($200.00).

Provided, however, that the provisions of this section shall not apply to the rafting and movement of logs in a running stream in the customary manner and for commercial purposes. Provided, however, the provisions of this section shall not be construed to affect in any way the riparian rights of any person, firm, corporation, association or organization.

HISTORY: Codes, 1942, § 2415.5; Laws, 1966, ch. 394, § 1, eff from and after passage (approved June 3, 1966).

Cross References — Authority of conservation officers of Commission on Wildlife, Fisheries and Parks to apprehend violators, see § 49-1-44.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

The evidence was sufficient to support the chancellor's holding that defendants' logging operation, which had left treetops in excess of six inches in diameter in a drainage canal, was the sole proximate cause of plaintiff's inadequate drainage, in violation of this section, where, notwithstanding the natural erosion of the drainage canal which continued during the years in question and the activity of beavers, who had been in the area long before the timber cutters, the heaviest rainfall in the two years in question had occurred approximately one month prior to planting season, and there would normally have been plenty of time for the waters to drain prior to planting. Georgia Pacific Corp. v. Armstrong, 451 So. 2d 201, 1984 Miss. LEXIS 1696 (Miss. 1984).

RESEARCH REFERENCES

Am. Jur.
78 Am. Jur. 2d, Waters § 188.
27 Am. Jur. Proof of Facts 2d 639, Failure to Exercise Due Care to Prevent Fall of Tree.

CJS.
93 C.J.S., Waters §§ 19, 20.

Law Reviews.
Ogletree, A primer concerning industrial timber litigation with emphasis upon Mississippi law. 59 Miss. L. J. 387, Fall 1989.

§ 97-15-43. Obstructing waterways; navigable channel.

If any captain or master of a vessel, or any person, shall obstruct, or cause to be obstructed, any navigable bay, river, creek, or other navigable channel or pass thereof, in any manner whatever, or shall discharge any ballast in any harbor or place other than that designated by the harbor commissioners therefor, on conviction thereof, the offender shall be fined not more than one thousand dollars, or imprisoned not longer than six months, or both.

HISTORY: Codes, Hutchinson's 1848, ch. 10, art. 7(41); 1857, ch. 64, art. 161; 1871, § 2624; 1880, § 2872; 1892, § 1146; 1906, § 1224; Hemingway's 1917, § 954; 1930, § 981; 1942, § 2211.

Cross References — Authority of conservation officers of Commission on Wildlife, Fisheries and Parks to apprehend violators, see § 49-1-44.

Obstruction of streams, see § 51-1-7.

Prohibition against obstruction of roads and waterways, see § 65-7-7.

RESEARCH REFERENCES

Am. Jur.
78 Am. Jur. 2d, Waters § 188.

CJS.
93 C.J.S., Waters §§ 19, 20.

§ 97-15-45. Obstructing waterways; permanently obstructing navigable waters.

If any person shall, in any manner, permanently obstruct any of the navigable waters, or shall place any obstruction therein and not remove the same within a reasonable time, the person offending shall be guilty of a misdemeanor, and, on conviction shall be punished by a fine of not more than fifty dollars or by imprisonment in the county jail not more than thirty days, or both.

HISTORY: Codes, 1892, § 1326; 1906, § 1397; Hemingway's 1917, § 1140; 1930, § 1171; 1942, § 2414; Laws, 1898, ch. 89; Laws, 1932, ch. 239.

Cross References — Constitutional provision concerning obstruction of navigable waters, see Miss Const Art. 4, § 81.

Statutory definition of navigable waters, see § 1-3-31.

Authority of conservation officers of Commission on Wildlife, Fisheries and Parks to apprehend violators, see § 49-1-44.

Mississippi Air and Water Pollution Control Law, see §§ 49-17-1 et seq.

Obstructions of streams, see §§ 51-1-5, 51-1-7.

Pearl River Water Supply District, see §§ 51-9-121 et seq.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

ALR.

Liability for pollution of subterranean waters. 38 A.L.R.2d 1265.

Measure and element of damages for pollution of well, cistern or spring. 76 A.L.R.4th 629.

Am. Jur.

78 Am. Jur. 2d, Waters § 188.

CJS.

93 C.J.S., Waters §§ 19, 20.

§ 97-15-47. Road overseers; refusing or neglecting duty.

All overseers of roads who shall refuse or neglect to do their duty, in any respect, as required by law, after notice of their appointment as such, shall, on conviction, for each neglect be fined not more than fifty dollars.

HISTORY: Codes, Hutchinson's 1848, ch. 10, art. 7(15); 1857, ch. 64, art. 158; 1871, § 2621; 1880, § 2868; 1892, § 1142; 1906, § 1220; Hemingway's 1917, § 950; 1930, § 977; 1942, § 2207.

Cross References — Liability of contractor, overseer, or supervisor for neglect of duty, see § 65-7-119.

RESEARCH REFERENCES

Am. Jur.

39 Am. Jur. 2d, Highways, Streets, and Bridges § 85.

CJS.

40 C.J.S., Highways §§ 213, 218.

§ 97-15-49. Road overseers; suffering road to remain out of repair.

If any person shall suffer any public road of which he is the overseer to remain out of repair for more than ten days at any one time, unless hindered by extreme bad weather, or other unavoidable cause, on conviction thereof he shall be fined not more than fifty dollars.

HISTORY: Codes, Hutchinson's 1848, ch. 10, art. 7(15); 1857, ch. 64, art. 162; 1871, § 2625; 1880, § 2869; 1892, § 1143; 1906, § 1221; Hemingway's 1917, § 951; 1930, § 978; 1942, § 2208.

Cross References — Liability of contractor, overseer, or supervisor for neglect of duty, see § 65-7-119.

RESEARCH REFERENCES

Am. Jur.
39 Am. Jur. 2d, Highways, Streets, and Bridges § 85.

CJS.
40 C.J.S., Highways §§ 213, 218.

§ 97-15-51. Corporation convicted for failure to keep road, etc., in repair; consequences of failure to pay fine.

When a corporation shall be convicted, on indictment for a nuisance, for not repairing or keeping in repair any road, causeway, bridge, or ferry, and shall neglect to pay the fine and costs awarded against it therefor for the space of three months after an execution shall have been issued for the same, then it shall not be lawful for such corporation, its officers, agents, or any other person, to demand or take any toll upon any part of its road, or any causeway, bridge, or ferry not kept in repair, until the fine and costs be paid.

HISTORY: Codes, 1857, ch. 64, art. 272; 1871, § 2772; 1880, § 3022; 1892, § 1371; 1906, § 1443; Hemingway's 1917, § 1200; 1930, § 1223; 1942, § 2466.

Cross References — Keeping toll bridges and ferries in good repair, see § 65-21-9.
Maintenance of toll ferries, see §§ 65-27-5, 65-27-13.

CHAPTER 17.

CRIMES AGAINST PROPERTY

In General. 97-17-1
Defendant's Liability for Value of Property Damaged, Destroyed, Taken or Converted. [Repealed]. 97-17-121
Larceny of Consigned Motor Fuel. 97-17-201

IN GENERAL

Sec.
97-17-1. Arson; first degree; burning dwelling house or outbuilding.
97-17-3. Arson; first degree; place of worship; failure to report accidental fires; juvenile offenders.
97-17-4. Forfeiture of property used in commission of arson.
97-17-5. Arson; second degree; other buildings or structures.
97-17-7. Arson; third degree; personal property.
97-17-9. Arson; fourth degree; attempt to burn.
97-17-11. Arson; insured property.
97-17-13. Arson; willfully or negligently firing woods, marsh, meadow, etc.; restitution of fire suppression costs.
97-17-14. Aggravated assault upon fire fighter, law enforcement officer or emergency medical personnel by injury-causing arson.
97-17-15. Boundary landmarks; altering or destroying.
97-17-17. Brands of saw-logs; altering or defacing.
97-17-19 and 97-17-21. Repealed.
97-17-23. Burglary; breaking and entering inhabited dwelling; home invasion.
97-17-25. Burglary; breaking out of dwelling.
97-17-27. Repealed.
97-17-29. Burglary; breaking inner door of dwelling by one lawfully in house.
97-17-31. Burglary; dwelling house defined.
97-17-33. Burglary; breaking and entering building other than dwelling; railroad car; vessels; automobiles.
97-17-35. Burglary; possession of burglar's tools.
97-17-37. Burglary; with explosives.
97-17-39. Penalties for injuring, destroying or defacing certain cemetery property, public buildings, schools or churches, or property thereof.
97-17-41. Grand larceny; felonious taking of personal property; felonious taking of property of established place of worship; penalties.
97-17-42. Larceny; taking possession of or taking away a motor vehicle; second or subsequent offense.
97-17-43. Petit larceny defined; penalty.
97-17-45. Larceny; stealing bond, note, bill, securities, etc.; proof of value.
97-17-47. Larceny; severing crops, or parts of improvements or enclosures.
97-17-49. Larceny; shearing wool from dead sheep.
97-17-51. Larceny; stealing dog.
97-17-53. Larceny; knowing and willful stealing or carrying away of livestock; obtaining livestock by means of fraudulent conduct; prima facie evidence of fraudulent conduct; restitution.
97-17-55. Larceny; stealing milk from cow.
97-17-57. Repealed.
97-17-58. Repealed.
97-17-59. Larceny; stealing timber; restitution.

Sec.
97-17-60. Payment for timber acquired for resale; penalties.
97-17-61. Larceny; taking and carrying away certain animals or motor vehicles not amounting to larceny.
97-17-62. Larceny; theft of rental property.
97-17-63. Larceny; tenants in common.
97-17-64. Larceny; under lease or rental agreement.
97-17-65. Looting.
97-17-67. Malicious mischief.
97-17-68. Coin operated devices; description of offenses and imposition of penalties; prosecution under this section does not bar prosecution or punishment under other statutes.
97-17-69. Repealed.
97-17-70. Receiving stolen property; dual charges of both stealing and receiving same property not to be brought against single defendant in same jurisdiction; penalties.
97-17-71. Receiving stolen property; definitions; scrap metal dealers and other purchasers to keep records of purchases of metal property; content of records; metal property to be held separate and identifiable from other purchases for not less than three (3) business days from date of purchase; inspection by law enforcement personnel; hold notice; recovery of metal property by rightful owner; restitution to dealer by unlawful seller; false statement of ownership; cash transactions for purchase of scrap metal prohibited; failure to maintain appropriate records; interstate transportation of metal property; purchase and possession of metal beer kegs and/or metal syrup tanks generally used by soft drink industry prohibited except in limited circumstances; sales and purchases of bronze memorials prohibited except in limited circumstances; purchase of utility access covers or metal property identified as belonging to political subdivision except in limited circumstances; purchases of metal property from minors prohibited; limitation on hours of purchase; penalties.
97-17-71.1. Registration by scrap metal dealers with office of Secretary of State required; penalties for violations; enforcement.
97-17-71.2. Scrap metal dealers prohibited from paying cash or making payment of any kind at time of transaction for air conditioner evaporator coil or condenser; scrap metal dealers permitted to purchase air conditioner evaporator coil or condenser only from certain contractors or companies; payment for scrap metal to be made by check or money order and mailed to business address of company for whom metal being sold; penalties for violations.
97-17-73. Removing agricultural products subject to lien from premises where produced.
97-17-75. Removing personal property subject to lien from county, or selling same.
97-17-77. Removing personal property subject to lien out of state.
97-17-79. Trees; boxing pine trees.
97-17-81. Trees; cutting or rafting upon lands of another.
97-17-83. Trees; injuring or destroying shade or ornamental tree.
97-17-84. Penalty for removal of "sea oats" or "uniola paniculata" from shores.
97-17-85. Trespass; going upon inclosed land of another.
97-17-87. Trespass; willful or malicious; penalty; enhanced penalties for willful trespass upon airport operations area.
97-17-89. Trespass; destruction or carrying away of vegetation, etc. not amounting to larceny.
97-17-91. Trespass; defacing, altering or destroying notices posted on land.

Sec.
97-17-93. Entering lands of another without permission; enforcement; relation to other statutes; dismissal of prosecution.
97-17-95. Trespass; entry on premises where atomic machinery, rockets and other dangerous devices are manufactured, etc.
97-17-97. Trespass; going into or upon, or remaining in or upon, buildings, premises or lands of another after being forbidden to do so.
97-17-99. Trespass; inciting or soliciting etc., persons to go into or upon, or remain in or upon, buildings, premises or lands of another.
97-17-101. Repealed.
97-17-103. Prohibition of recovery for injuries sustained during criminal trespass.

§ 97-17-1. Arson; first degree; burning dwelling house or outbuilding.

(1) Any person who willfully and maliciously sets fire to or burns or causes to be burned or who aids, counsels or procures the burning of any dwelling house, whether occupied, unoccupied or vacant, or any kitchen, shop, barn, stable or other outhouse that is parcel thereof, or belonging to or adjoining thereto, or any state-supported school building in this state whether the property of himself or of another, shall be guilty of arson in the first degree, and upon conviction thereof, be sentenced to the penitentiary for not less than five (5) nor more than twenty (20) years and shall pay restitution for any damage caused.

(2) Any person convicted under this section shall be subject to treble damages for any damage caused by such person.

(3) Any property used in the commission of the offense of arson in the first degree shall be subject to forfeiture as provided in Section 97-17-4.

HISTORY: Codes, 1942, § 2006; Laws, 1932, ch. 272; Laws, 1997, ch. 473, § 1, eff from and after passage (approved March 27, 1997).

Cross References — State fire marshal, see §§ 45-11-1 et seq.

Disqualification of persons convicted of certain crimes to hold office in labor organizations or participate in labor management functions, see § 71-1-49.

Reporting arson incidents, see § 83-5-89.

Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see § 97-43-1 et seq.

Limitations of prosecutions, generally, see § 99-1-5.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Malice as element of crime.
3. Indictment.
4. Sufficiency of indictment.
5. —Under former statutes.
6. Corpus delicti.
7. Evidence.
8. Miscellaneous.
9. Lesser-included offense.

1. In general.

Sentence to 20 years imprisonment without reduction, revocation or parole imposed upon defendant convicted of arson and of being habitual criminal is not unconstitutionally excessive where arson conviction is based upon defendant's having set occupied house on fire at both front and back doors and where defendant has prior convictions for burglary and uttering forgery. Jenkins v. State, 483 So. 2d 1330, 1986 Miss. LEXIS 2395 (Miss. 1986).

It is unlawful to burn the dwelling house of another, even though title thereto may be involved in litigation, and it is not necessary that the state litigate the question of disputed ownership with the defendant in the trial of the criminal case when the state is otherwise able to sufficiently identify the property in the indictment and under the proof in such manner as to clearly enable the accused to invoke such indictment and the record of his conviction in support of a plea of former jeopardy if subsequently charged with the same unlawful act. Jenkins v. State, 197 Miss. 346, 19 So. 2d 921, 1944 Miss. LEXIS 305 (Miss. 1944).

House joined to a dwelling by an unenclosed gallery and roof was a part of the dwelling house within this section [Code 1942, § 2006]. Spears v. State, 92 Miss. 613, 46 So. 166, 1908 Miss. LEXIS 259 (Miss. 1908).

2. Malice as element of crime.

Trial court properly ruled in favor of the State in a former prisoner's action seeking compensation for wrongful conviction and imprisonment under the Mississippi Wrongful Conviction Act because it did not err in failing to explicitly discuss the malice element of arson; the trial court clearly determined that the former prisoner intentionally set a fire and that he failed to prove that he did not maliciously set the fire. Isaac v. State, 187 So. 3d 1009, 2016 Miss. LEXIS 140 (Miss. 2016).

Evidence was sufficient to show malice where the state's expert testified that his opinion was that the fire was set intentionally since, inter alia, the fire had two separate, non-connecting points of origin. Barnes v. State, 721 So. 2d 1130, 1998 Miss. App. LEXIS 684 (Miss. Ct. App. 1998).

Where indictment for arson was wholly void for failing to allege burning was malicious, validity could be challenged for first time on appeal from overruling of motion to set aside judgment. Reed v. State, 171 Miss. 65, 156 So. 650, 1934 Miss. LEXIS 197 (Miss. 1934).

An indictment charging, in the language of the statute, the wilful burning of goods and that it was done feloniously but failing to allege defendant's malice, is fatally defective. Maxwell v. State, 68 Miss. 339, 8 So. 546, 1890 Miss. LEXIS 52 (Miss. 1890).

Malice is a necessary ingredient in the crime of arson at common law, and the indictment must charge that it was done "maliciously." Jesse v. State, 28 Miss. 100, 1854 Miss. LEXIS 154 (Miss. 1854).

3. Indictment.

Felony murder as a capital crime by definition requires that there be two felonies, the homicide being the intentional or unintentional product of the other felony. The elements set out in the indictment against defendant only charged one felony, that defendant killed the victim by setting the victim on fire and that act was not a capital offense; in order for defendant to have been charged with capital murder, defendant must have been charged with arson by setting the house trailer or sofa on fire and that defendant killed the victim (defendant's husband) as a result. Buckley v. State, 875 So. 2d 1110, 2004 Miss. App. LEXIS 586 (Miss. Ct. App. 2004).

Indictment charging that defendant burned a house and designated personalty therein, charged two offenses. State v. Freeman, 90 Miss. 315, 43 So. 289, 1907 Miss. LEXIS 49 (Miss. 1907).

4. Sufficiency of indictment.

An indictment charging arson in the disjunctive by use of the word "or" may properly be amended to charge the offense in the conjunctive by substituting the word "and" for the word "or". Byrd v. State, 228 So. 2d 874, 1969 Miss. LEXIS 1408 (Miss. 1969).

Indictment charging defendant "did then and there wilfully, unlawfully and feloniously set fire to and burn a certain dwelling house then and there situated," etc., is sufficient to cover an unoccupied dwelling house. Banks v. State, 93 Miss. 700, 47 So. 437, 1908 Miss. LEXIS 142 (Miss. 1908).

An indictment charging, in the language of the statute, the wilful burning of goods and that it was done feloniously but failing to allege defendant's malice is fatally defective. Maxwell v. State, 68 Miss. 339, 8 So. 546, 1890 Miss. LEXIS 52 (Miss. 1890).

5. —Under former statutes.

The element of occupancy by some human being was held to have been sufficiently alleged by an indictment which avers that the house in question was a "dwelling house" occupied by the owner and his family. State v. Stringer, 105 Miss. 851, 63 So. 270, 1913 Miss. LEXIS 265 (Miss. 1913).

Under a former statute making a crime the setting fire in the nighttime to a structure in which some human being usually stays, lodges or resides at night, it has been held that an indictment must aver distinctly that the "setting fire to" was in the nighttime, and also, that the "staying, lodging, and residing" was in the nighttime (Lewis v. State, 49 M 354; Dick v. State, 53 M 384); and that under an indictment following the statute, it was error to refuse to instruct that, if it was not dark when the fire was set, accused could not be convicted. Rist v. State, 93 Miss. 841, 47 So. 433, 1908 Miss. LEXIS 138 (Miss. 1908).

6. Corpus delicti.

Where the corpus delicti has been established by a preponderance of evidence, a confession of guilt is admissible, and if the proof of the corpus delicti coupled with the confession show the corpus delicti beyond a reasonable doubt it is sufficient. Ruffin v. State, 205 Miss. 642, 39 So. 2d 269, 1949 Miss. LEXIS 454 (Miss. 1949).

Incendiary origin of fire is shown by evidence, aside from confession, showing that two fires were going at same time in two separate places in house, that can and jugs of kerosene were so placed as to aid and guarantee successful fire, that household and personal effects of owner of house were found elsewhere after fire at place defendant claimed to have placed them, and that insurance on house and its contents was increased shortly before fire. Ruffin v. State, 205 Miss. 642, 39 So. 2d 269, 1949 Miss. LEXIS 454 (Miss. 1949).

The burning of a dwelling house at night by a fire originating from without, coupled with the fact that shortly after the fire tracks resembling those of the accused were found about 75 yards from the house, is insufficient evidence to establish a corpus delicti of arson. Bolden v. State, 98 Miss. 723, 54 So. 241, 1910 Miss. LEXIS 117 (Miss. 1910).

The corpus delicti in a case of arson consists (1) of the burning of the house or other property; and (2) of criminal agency in causing the fire. Spears v. State, 92 Miss. 613, 46 So. 166, 1908 Miss. LEXIS 259 (Miss. 1908); Mister v. State, 190 So. 2d 869, 1966 Miss. LEXIS 1409 (Miss. 1966).

7. Evidence.

Defendant was properly indicted for first-degree arson, and his actions and the resulting burning transcended beyond a mere attempt to commit arson, because the evidence was sufficient to show or prove that defendant caused the victim's house to be burned; both testimonial evidence and photographic evidence were offered to show that the victim's dwelling was burned and that Robinson was the person who caused her dwelling to be burned. Robinson v. State, 270 So. 3d 980, 2018 Miss. App. LEXIS 471 (Miss. Ct. App. 2018).

Rational jury could have concluded from defendant's financial situation and the strong evidence supporting her prior commission of insurance fraud that defendant had the motive to burn down her house and recover the insurance proceeds. Dees v. State, 126 So. 3d 21, 2013 Miss. LEXIS 593 (Miss. 2013).

Circumstantial evidence presented by the State was sufficient to sustain defendant's arson conviction; reasonable jurors could have rejected a defense expert's testimony in favor of the testimony of the State's witnesses and found beyond a reasonable doubt that the fire to defendant's home did not have an electrical cause and was incendiary. Dees v. State, 126 So. 3d 21, 2013 Miss. LEXIS 593 (Miss. 2013).

Defendant's conviction for capital murder and arson was proper; the evidence was sufficient because defendant intended to severely beat the victim, and then moved and burned his body. Fuqua v. State, 938 So. 2d 277, 2006 Miss. App.

LEXIS 164 (Miss. Ct. App.), cert. denied, 937 So. 2d 450, 2006 Miss. LEXIS 541 (Miss. 2006), cert. denied, 549 U.S. 1344, 127 S. Ct. 2037, 167 L. Ed. 2d 774, 2007 U.S. LEXIS 4043 (U.S. 2007).

Where defendant's wife testified that defendant killed her ex-boyfriend, set his house on fire, and threw the pistol into the Tennessee River, the evidence was sufficient to convict defendant of murder, arson, and possession of a firearm by a felon. The trial court properly denied defendant's motion for judgment notwithstanding the verdict. Roland v. State, 882 So. 2d 262, 2004 Miss. App. LEXIS 911 (Miss. Ct. App. 2004).

Sufficient evidence existed to convict defendant of arson: the fire started in three different areas in the house and regular household materials were used to start the fire; defendant lied about the condition of the victims, who were killed in the days before the fire, defendant admitted to having hit one victim and dragged him to a back bedroom where one of the fires was started. McGruder v. State, 886 So. 2d 27, 2004 Miss. App. LEXIS 590 (Miss. Ct. App. 2004).

Where defendant had a hostile encounter with his estranged wife, purportedly threatened to burn the homes of the wife's two brothers, and within two hours authorities were called to suspicious fires at the brothers' homes, something more than a threat had to link defendant to the subject fires; because there was no physical evidence linking defendant to the fires, the evidence was legally insufficient to sustain his convictions on two counts of arson. Oswalt v. State, 885 So. 2d 720, 2004 Miss. App. LEXIS 210 (Miss. Ct. App.), cert. denied, 887 So. 2d 183, 2004 Miss. LEXIS 1344 (Miss. 2004).

Defendant's motion for a new trial was properly denied in an arson case because there was sufficient circumstantial evidence to support the conviction; the evidence showed that defendant, the sole occupant of a residence, was at home shortly before a fire started, an accelerant was used on a couch, and a vehicle left the residence immediately before the fire was reported. Miller v. State, 856 So. 2d 420, 2003 Miss. App. LEXIS 243 (Miss. Ct. App. 2003), aff'd in part and rev'd in part, 2004 Miss. LEXIS 694 (Miss. June 17, 2004).

Evidence was insufficient to convict where defendant was at the scene of the fire at a time when he could have started the fire, but there was no admission by him that he actually did start the fire and no physical evidence connecting defendant with the fire. Gatlin v. State, 754 So. 2d 1157, 1999 Miss. LEXIS 386 (Miss. 1999).

The evidence was insufficient to prove beyond a reasonable doubt that the defendant "willfully and maliciously" started the fire in question where there were no witnesses to the fire, and the defendant stated that he "guessed the fire was started by his cigarette" but he said he did not intentionally start the fire. Isaac v. State, 645 So. 2d 903, 1994 Miss. LEXIS 497 (Miss. 1994).

The evidence was sufficient to support a conviction of arson, even though a person other than the defendant may have set the initial fire in the home, where the defendant told a fire marshall that he started one of the fires in the home by taking a burning rag from another fire and throwing it into a closet. Cox v. State, 586 So. 2d 761, 1991 Miss. LEXIS 588 (Miss. 1991).

Proof of insurance is probative of the defendant's intent to burn property under this section, and is, therefore, admissible evidence in an arson prosecution. Wells v. State, 521 So. 2d 1274, 1987 Miss. LEXIS 2939 (Miss. 1987).

Whether confession in arson prosecution was free and voluntary is a question for the trial judge. Ruffin v. State, 205 Miss. 642, 39 So. 2d 269, 1949 Miss. LEXIS 454 (Miss. 1949).

Under indictment for arson charging that the house was owned by a named individual and other heirs of a deceased whose names are unknown to the grand jurors, but which was then occupied by defendant's wife, proof that the house did belong to the named individual and to another person or persons unknown was sufficient to support conviction. Jenkins v. State, 197 Miss. 346, 19 So. 2d 921, 1944 Miss. LEXIS 305 (Miss. 1944).

8. Miscellaneous.

Trial court properly ruled in favor of the State in a former prisoner's action seeking compensation for wrongful conviction and imprisonment under the Mississippi Wrongful Conviction Act because substantial evidence supported the findings that the former prisoner intentionally set the fire that led to his incarceration and that he failed to prove the absence of malice; the former prisoner's narrative varied between the civil and criminal trials, and a witness testified to establish his intent. Isaac v. State, 187 So. 3d 1009, 2016 Miss. LEXIS 140 (Miss. 2016).

Trial court did not err by imposing sentences of five years for conspiracy, 25 years for burglary of a dwelling, five years for grand larceny, and 20 years for first degree arson, as these were all the maximum sentences allowed for these crimes. McCollins v. State, 952 So. 2d 305, 2007 Miss. App. LEXIS 167 (Miss. Ct. App. 2007).

In a case where defendant was convicted of several crimes relating to the arson and burglary of a residence, his double jeopardy rights were not violated due to the fact that some of the elements of the crimes overlapped; each of the crimes involved required proof of an additional fact that the other did not. McCollins v. State, 952 So. 2d 305, 2007 Miss. App. LEXIS 167 (Miss. Ct. App. 2007).

Appellant could not rely on Miss. Code Ann. § 99-19-101(6) to support her claim that her counsel had inadequately represented her in failing to investigate and present mitigating evidence during her sentencing hearing on her conviction for arson because § 99-19-101(6) concerned mitigating evidence presented to a jury in capital cases. Arson was not a "capital crime" as defined by Miss. Code Ann. § 1-3-4 because § 1-3-4 limited capital crimes to crimes punishable by death or imprisonment for life in the state penitentiary, and the maximum punishment for arson was 20 years in the penitentiary under Miss. Code Ann. § 97-17-1. Smith v. State, 880 So. 2d 1094, 2004 Miss. App. LEXIS 865 (Miss. Ct. App. 2004).

In arson prosecution of storeowner in which 10 year sentence of main witness who is in custody of Mississippi Department of Corrections is vacated after much pressure is brought to bear on witness to implicate owner as witness does, coupled with absence of any evidence of purpose for owner to burn business, particularly at financial loss, owner is entitled to jury instruction to effect that testimony of accomplice should be viewed with great care and caution. Hussey v. State, 473 So. 2d 478, 1985 Miss. LEXIS 2171 (Miss. 1985).

The contention that the district attorney, in his examination of the state's witnesses used language indicating that the barn involved was so connected with the residence as to make its burning first degree arson under Code 1942, § 2006, instead of second degree arson for which the accused was indicted and was being tried, was not well taken where no objections to the use of the word "barn" referring to the larger building that was burned, was made while the witness was being examined and the defense attorney referred to the building as a barn in his cross-examination, and there is no dispute in the evidence whatsoever that the barn was located some 250 yards from the residence, so that there was no connection between the barn and the residence. Doroh v. State, 229 Miss. 315, 90 So. 2d 653, 1956 Miss. LEXIS 611 (Miss. 1956).

Words to effect that plaintiff set fire to and burned his house held to be actionable per se. Jefferson v. Bates, 152 Miss. 128, 118 So. 717, 1928 Miss. LEXIS 225 (Miss. 1928).

If in a case of arson the verdict be right but the judgment wrong-penalty imposed under wrong section-the supreme court will reverse leaving the verdict unaffected, and remand the case, that proper judgment may be rendered. Dick v. State, 53 Miss. 384, 1876 Miss. LEXIS 83 (Miss. 1876).

9. Lesser-included offense.

Where appellant was charged with two counts of arson under Miss. Code Ann. § 97-17-1, the burning of the second dwelling was not a lesser-included offense of the first count of arson even if damage to the second dwelling was minimal damage to the property's porch because both crimes shared the same elements of a willful or malicious burning of a house. Section 97-17-1 made no exception for minimum to hardly-any damage, done only to a house's front porch. Smith v.

State, 880 So. 2d 1094, 2004 Miss. App. LEXIS 865 (Miss. Ct. App. 2004).

RESEARCH REFERENCES

ALR.

Vacancy or nonoccupancy of building as affecting its character as "dwelling" as regards arson. 44 A.L.R.2d 1456.

Burning of building by mortgagor as burning property of another so as to constituting arson. 76 A.L.R.2d 524.

Admissibility, in prosecution for criminal burning of property, or for maintaining fire hazard, of evidence of other fires. 87 A.L.R.2d 891.

What constitutes "burning" to justify charge of arson. 28 A.L.R.4th 482.

Pyromania and the criminal law. 51 A.L.R.4th 1243.

Am. Jur.

5 Am. Jur. 2d, Arson and Related Offenses §§ 1 et seq.

12 Am. Jur. Pl & Pr Forms (Rev), Fires, Form 1.1 (complaint, petition, or declaration – by owner of building and insurer – against arsonist).

2 Am. Jur. Trials, Investigating Particular Crimes §§ 2-8 (arson).

19 Am. Jur. Trials, Preparation and Trial of Arson Case, §§ 1 et seq.

Practice References.

Ronald L. Schoenberg, Criminal Law Deskbook (Matthew Bender).

§ 97-17-3. Arson; first degree; place of worship; failure to report accidental fires; juvenile offenders.

(1) Any person who willfully and maliciously sets fire to, or burns, or causes to be burned, or who is a party to destruction by explosion from combustible material, who aids, counsels, or procures the burning or destruction of any church, temple, synagogue or other established place of worship, whether in use or vacant, shall be guilty of arson in the first degree and, upon conviction therefor, shall be sentenced to the penitentiary for not less than five (5) nor more than thirty (30) years and shall pay restitution for any damage caused.

(2) Any person observing or witnessing the destruction by fire of any state-supported school building or any church, temple, synagogue or other established place of worship, whether occupied or vacant, which fire was the result of his or her act of an accidental nature, and who willfully fails to sound the general alarm or report such fire to the local fire department or other local authorities, shall be guilty of a felony and, upon conviction therefor, shall be sentenced to the penitentiary for not less than two (2) nor more than ten (10) years and shall pay restitution for any damage caused.

(3) Any person, who by reason of his age comes under the jurisdiction of juvenile authorities and who is found guilty under subsection (1) of this section, shall not be eligible for probation unless and until at least six (6) months' confinement has been served in a state reform school.

(4) Any person convicted under this section shall be subject to treble damages for any damage caused by such person.

(5) Any property used in the commission of arson in the first degree shall be subject to forfeiture as provided in Section 97-17-4.

HISTORY: Codes, 1942, § 2006.5; Laws, 1958, ch. 256; Laws, 1997, ch. 473, § 2, eff from and after passage (approved March 27, 1997).

Cross References — Reporting arson incidents, see § 83-5-89.

Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see § 97-43-1 et seq.

JUDICIAL DECISIONS

1. In general.

The trial judge erred in ordering a minor child, who had been adjudicated delinquent on the basis of a violation of this section, to be confined in a training school for a minimum period of six months, under the impression that subsection (3) of this section required him to do so, since the Youth Court Law, enacted in 1979 and amended in 1980, clearly supersedes subsection (3) of this section, so that the lower court was authorized to proceed under § 43-21-605 of the Act, which sets forth disposition alternatives in delinquency cases. In Interest of T.D.B., 446 So. 2d 598, 1984 Miss. LEXIS 1653 (Miss. 1984).

RESEARCH REFERENCES

ALR.

Pyromania and the criminal law. 51 A.L.R.4th 1243.

Am. Jur.

5 Am. Jur. 2d, Arson and Related Offenses §§ 1 et seq.

12 Am. Jur. Pl & Pr Forms (Rev), Fires, Form 14 (complaint, petition, or declaration – by owner of building and insurer – against arsonist).

CJS.

6A C.J.S., Arson § 9.

§ 97-17-4. Forfeiture of property used in commission of arson.

(1) All property, real or personal, including money, used in the course of, intended for use in the course of, derived from, or realized through, conduct in violation of a provision of Section 97-17-1 or 97-17-3 is subject to civil forfeiture to the state pursuant to the provisions of this section; provided, however, that a forfeiture of personal property encumbered by a bona fide security interest or real property encumbered by a bona fide mortgage, deed of trust, lien or encumbrance of record shall be subject to the interest of the secured party or subject to the interest of the holder of the mortgage deed of trust, lien of encumbrance of record if such secured party or holder neither had knowledge of or consented to the act or omission.

(2) Property subject to forfeiture may be seized by law enforcement officers upon process issued by any appropriate court having jurisdiction over the property. Seizure without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant or an inspection under a lawful administrative inspection;

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this section.

(3) When any property is seized pursuant to this section, proceedings under this section shall be instituted promptly.

(4)(a) A petition for forfeiture shall be filed promptly in the name of the State of Mississippi with the clerk of the circuit court of the county in which the seizure is made. A copy of such petition shall be served upon the following persons by service of process in the same manner as in civil cases:

(i) The owner of the property, if address is known;

(ii) Any secured party who has registered his lien or filed a financing statement as provided by law, if the identity of such secured party can be ascertained by the state by making a good faith effort to ascertain the identity of such secured party as described in paragraphs (b), (c), (d), (e) and (f) of this subsection;

(iii) Any other bona fide lienholder or secured party or other person holding an interest in the property in the nature of a security interest of whom the state has actual knowledge;

(iv) A holder of a mortgage, deed of trust, lien or encumbrance of record, if the property is real estate by making a good faith inquiry as described in paragraph (g) of this section; and

(v) Any person in possession of property subject to forfeiture at the time that it was seized.

(b) If the property is a motor vehicle susceptible of titling under the Mississippi Motor Vehicle Title Law and if there is any reasonable cause to believe that the vehicle has been titled, the state shall make inquiry of the State Tax Commission as to what the records of the State Tax Commission show as to who is the record owner of the vehicle and who, if anyone, holds any lien or security interest which affects the vehicle.

(c) If the property is a motor vehicle and is not titled in the State of Mississippi, then the state shall attempt to ascertain the name and address of the person in whose name the vehicle is licensed, and if the vehicle is licensed in a state which has in effect a certificate of title law, the state shall make inquiry of the appropriate agency of that state as to what the records of the agency show as to who is the record owner of the vehicle and who, if anyone, holds any lien, security interest, or other instrument in the nature of a security device which affects the vehicle.

(d) If the property is of a nature that a financing statement is required by the laws of this state to be filed to perfect a security interest affecting the property and if there is any reasonable cause to believe that a financing statement covering the security interest has been filed under the laws of this state, the state shall make inquiry of the appropriate office designated in Section 75-9-501 as to what the records show as to who is the record owner of the property and who, if anyone, has filed a financing statement affecting the property.

(e) If the property is an aircraft or part thereof and if there is any reasonable cause to believe that an instrument in the nature of a security device affects the property, then the state shall make inquiry of the administrator of the Federal Aviation Administration as to what the records of the administrator show as to who is the record owner of the property and who, if anyone, holds an instrument in the nature of a security device which affects the property.

(f) In the case of all other personal property subject to forfeiture, if there is any reasonable cause to believe that an instrument in the nature of a security device affects the property, then the state shall make a good faith inquiry to identify the holder of any such instrument.

(g) If the property is real estate, the state shall make inquiry at the appropriate places to determine who is the owner of record and who, if anyone is a holder of a bona fide mortgage, deed of trust, lien or encumbrance.

(h) In the event the answer to an inquiry states that the record owner of the property is any person other than the person who was in possession of it when it was seized, or states that any person holds any lien, encumbrance, security interest, other interest in the nature of a security interest, mortgage or deed of trust which affects the property, the state shall cause any record owner and also any lienholder, secured party, other person who holds an interest in the property in the nature of a security interest, or holder of an encumbrance, mortgage or deed of trust which affects the property to be named in the petition of forfeiture and to be served with process in the same manner as in civil cases.

(i) If the owner of the property cannot be found and served with a copy of the petition of forfeiture, or if no person was in possession of the property subject to forfeiture at the time that it was seized and the owner of the property is unknown, the state shall file with the clerk of the court in which the proceeding is pending an affidavit to such effect, whereupon the clerk of the court shall publish notice of the hearing addressed to "the Unknown Owner of ________," filling in the blank space with a reasonably detailed description of the property subject to forfeiture. Service by publication shall contain the other requisites prescribed in Section 11-33-41, and shall be served as provided in Section 11-33-37 for publication of notice for attachments at law.

(j) No proceedings instituted pursuant to the provisions of this article shall proceed to hearing unless the judge conducting the hearing is satisfied that this section has been complied with. Any answer received from an inquiry required by paragraphs (b) through (g) of this section shall be introduced into evidence at the hearing.

(5)(a) An owner of property that has been seized shall file a verified answer within twenty (20) days after the completion of service of process. If no answer is filed, the court shall hear evidence that the property is subject to forfeiture and forfeit the property to the state. If an answer is filed, a time for hearing on forfeiture shall be set within thirty (30) days of filing the answer or at the succeeding term of court if court would not be in progress within thirty (30) days after filing the answer. Provided, however, that upon request by the state or the owner of the property, the court may postpone said forfeiture hearing to a date past the time any criminal action is pending against said owner.

(b) If the owner of the property has filed a verified answer denying that the property is subject to forfeiture, then the burden is on the state to prove that the property is subject to forfeiture. The burden of proof placed upon the state shall be clear and convincing proof. However, if no answer has been filed by the owner of the property, the petition for forfeiture may be introduced into evidence and is prima facie evidence that the property is subject to forfeiture.

(c) At the hearing any claimant of any right, title, or interest in the property may prove his lien, encumbrance, security interest, other interest in the nature of a security interest, mortgage or deed of trust to be bona fide and created without knowledge or consent that the property was to be used so as to cause the property to be subject to forfeiture.

(d) If it is found that the property is subject to forfeiture, then the judge shall forfeit the property to the state. However, if proof at the hearing discloses that the interest of any bona fide lienholder, secured party, other person holding an interest in the property in the nature of a security interest or any holder of a bona fide encumbrance, mortgage or deed of trust is greater than or equal to the present value of the property, the court shall order the property released to him. If such interest is less than the present value of the property and if the proof shows that the property is subject to forfeiture, the court shall order the property forfeited to the state.

(6)(a) All personal property, including money, which is forfeited to the state and is not capable of being sold at public auction shall be liquidated and the proceeds, after deduction of all storage and court costs, shall be forwarded to the State Treasurer and deposited in the General Fund of the state.

(b) All real estate which is forfeited to the state shall be sold to the highest bidder at a public auction to be conducted by the state at such place, on such notice and in accordance with the same procedure, as far as practicable, as is required in the case of sales of land under execution of law. The proceeds of such sale shall first be applied to the cost and expense in administering and conducting such sale, then to the satisfaction of all mortgages, deeds of trusts, liens and encumbrances of record on such property. All proceeds in excess of the amount necessary for the cost of the sale of such land and the satisfaction of any liens thereon shall be deposited in the General Fund of the State Treasury.

(c) All other property that has been seized by the state and that has been forfeited shall, except as otherwise provided, be sold at a public auction for cash by the state to the highest and best bidder after advertising the sale for at least once each week for three (3) consecutive weeks, the last notice to appear not more than ten (10) days nor less than five (5) days prior to such sale, in a newspaper having a general circulation throughout the State of Mississippi. Such notices shall contain a description of the property to be sold and a statement of the time and place of sale. It shall not be necessary to the validity of such sale either to have the property present at the place of sale or to have the name of the owner thereof stated in such notice. The proceeds of the sale shall be delivered to the circuit clerk and shall be disposed of as follows:

(i) To any bona fide lienholder, secured party, or other party holding an interest in the property in the nature of a security interest, to the extent of his interest; and

(ii) The balance, if any, after deduction of all storage and court costs, shall be forwarded to the State Treasurer and deposited with and used as general funds of the state.

(ii) The balance, if any, after deduction of all storage and court costs, shall be forwarded to the State Treasurer and deposited with and used as general funds of the state.

(d) The State Tax Commission shall issue a certificate of title to any person who purchases property under the provisions of this section when a certificate of title is required under the laws of this state.

(d) The State Tax Commission shall issue a certificate of title to any person who purchases property under the provisions of this section when a certificate of title is required under the laws of this state.

HISTORY: Laws, 1997, ch. 473, § 3; Laws, 2001, ch. 495, § 27, eff from and after Jan. 1, 2002.

Editor's Notes — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Motor Vehicle Title Law, see §§ 63-2-1 et seq.

RESEARCH REFERENCES

ALR.

Lawlessness of seizure of property used in violation of law as prerequisite to forfeiture action or proceeding. 8 A.L.R.3d 473.

Necessity of conviction of offense associated with property seized in order to support forfeiture of property to state or local authorities. 38 A.L.R.4th 515.

Am. Jur.

36 Am. Jur. 2d, Forfeitures and Penalties § 29.

CJS.

37 C.J.S. Forfeitures, § 1 et seq.

Law Reviews.

Payne, An Introduction to Civil Forfeiture in Mississippi: An Effective Law Enforcement Tool or Cash Register Justice?, 59 Miss. L. J. 453, Fall 1989.

§ 97-17-5. Arson; second degree; other buildings or structures.

Any person who wilfully and maliciously sets fire to or burns or causes to be burned, or who aids, counsels or procures the burning of any building or structure of whatsoever class or character, whether the property of himself or of another, not included or described in Section 97-17-1 or Section 97-17-3, shall be guilty of arson in the second degree, and upon conviction thereof, be sentenced to the penitentiary for not less than one nor more than ten years.

HISTORY: Codes, 1942, § 2007; Laws, 1932, ch. 272.

Cross References — Reporting arson incidents, see § 83-5-89.

Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see § 97-43-1 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Indictment.
3. Evidence.
4. Instructions.

1. In general.

As a matter of common sense, a person who is deaf should not sit on a jury trying a second-degree arson charge but, where the circuit court interrogated the juror with defective hearing and was satisfied that the juror could hear and understand the proceedings, the court was within its discretion and committed no error in its denial of a motion for mistrial and a subsequent motion for a new trial made upon the ground of a defective hearing of the juror. Weaver v. State, 497 So. 2d 1089, 1986 Miss. LEXIS 2660 (Miss. 1986).

While it follows as a matter of common sense that a person who is deaf should not sit on a jury trying a second-degree arson case, where the circuit court had interrogated the juror alleged to have defective hearing and had satisfied itself that the juror could hear and understand the proceedings, the court did not abuse its discretion or commit error in denying defendants motions for mistrial and for a new trial. Weaver v. State, 497 So. 2d 1089, 1986 Miss. LEXIS 2660 (Miss. 1986).

The contention that the district attorney, in his examination of the state's witnesses used language indicating that the barn involved was so connected with the residence as to make its burning first degree arson under Code 1942, § 2006, instead of second degree arson for which the accused was indicted and was being tried, was not well taken where no objections to the use of the word "barn" referring to the larger building that was burned, was made while the witness was being examined and the defense attorney referred to the building as a barn in his cross-examination, and there is no dispute in the evidence whatever that the barn was located some 250 yards from the residence, so that there was no connection between the barn and the residence. Dorroh v. State, 229 Miss. 315, 90 So. 2d 653, 1956 Miss. LEXIS 611 (Miss. 1956).

2. Indictment.

The fact that § 97-17-11 might also have covered and made unlawful the conduct of the defendant did not preclude his being charged under this section, the second degree arson statute, provided the indictment fairly charged him with the violation of the latter statute. Weaver v. State, 497 So. 2d 1089, 1986 Miss. LEXIS 2660 (Miss. 1986).

An indictment stating, in terms of the statute, that the accused set fire and burned a building unlawfully, wilfully, maliciously and feloniously, and that he did so with the wilful, malicious and felonious intent to injure and prejudice the owner of the building, necessarily charged that the accused intended to burn the building. Dorroh v. State, 229 Miss. 315, 90 So. 2d 653, 1956 Miss. LEXIS 611 (Miss. 1956).

An indictment for arson under this section [Code 1942, § 2007] is good though it does not aver that the burning was done in the nighttime, or that there was at the time some human being usually staying, lodging, or residing at night. Dick v. State, 53 Miss. 384, 1876 Miss. LEXIS 83 (Miss. 1876).

3. Evidence.

Defendant's admission that he intended to burn a building and that the vent panels and shoe rack were burned was sufficient to establish second degree arson under Miss. Code Ann. § 97-17-5 because destruction of the building was not required. Hughes v. State, 989 So. 2d 434, 2008 Miss. App. LEXIS 464 (Miss. Ct. App. 2008).

On appeal from a second degree arson conviction, the defendant was not in a position to complain regarding evidence concerning insurance where he was a first party to elicit testimony concerning the subject matter, and he failed to object timely when the prosecution followed up. Weaver v. State, 497 So. 2d 1089, 1986 Miss. LEXIS 2660 (Miss. 1986).

The uncorroborated testimony of an accomplice, where not wholly improbable or otherwise incredible, may be sufficient to support a verdict of guilty of arson in the second degree. Weaver v. State, 497 So. 2d 1089, 1986 Miss. LEXIS 2660 (Miss. 1986).

An arson defendant, whose right to counsel had attached, had not waived his right to assistance of counsel incident to interrogation, where, at the time he made self-incriminating statements, he had no knowledge or way of knowing that he was being interrogated by an informant, wearing a concealed microphone, who was acting for law enforcement officers, and that his statements were being monitored and recorded, and, since, defendant's state constitutional rights were violated, the admission of tapes containing the incriminating statements in evidence, over defendant's objection, constituted reversible error. Page v. State, 495 So. 2d 436, 1986 Miss. LEXIS 2516 (Miss. 1986).

Statements in tape recorded conversation between defendant and informant which incriminated defendant's wife in arson venture were pure hearsay, and inadmissible at wife's trial when offered as proof of her acts. Page v. State, 495 So. 2d 436, 1986 Miss. LEXIS 2516 (Miss. 1986).

Testimony of person hired by saloon owner to burn competing saloon, which testimony is consistent with fire marshal's testimony concerning manner in which saloon was burned and is also corroborated by testimony of other witnesses, is sufficient to support conviction of saloon owner for arson. Pace v. State, 473 So. 2d 167, 1985 Miss. LEXIS 2146 (Miss. 1985).

Although conflicting, evidence, including testimony of a witness that he had seen the accused set fire to a barn and then drag a lighted bale of straw and place it in a shed in an effort to burn the shed and the tools therein, was sufficient to sustain the accused's conviction under this section [Code 1942, § 2007]. Dorroh v. State, 229 Miss. 315, 90 So. 2d 653, 1956 Miss. LEXIS 611 (Miss. 1956).

Evidence establishing that the prosecuting witness had previously prosecuted the accused was competent as showing a motive on the part of the accused for burning the buildings of the prosecuting witness. Dorroh v. State, 229 Miss. 315, 90 So. 2d 653, 1956 Miss. LEXIS 611 (Miss. 1956).

Where the accused took the stand as a witness in a prosecution for second degree arson, he thereby subjected himself to cross-examination, and made competent his own testimony, or any other admissible evidence tending to establish his former conviction of crimes. Dorroh v. State, 229 Miss. 315, 90 So. 2d 653, 1956 Miss. LEXIS 611 (Miss. 1956).

4. Instructions.

State's instruction, which followed the wording of the statute and the indictment, correctly informed the jury of the elements of the crime of second degree arson notwithstanding the fact that it failed to expressly and specifically require the jury to find the accused had the intent to burn the buildings. Dorroh v. State, 229 Miss. 315, 90 So. 2d 653, 1956 Miss. LEXIS 611 (Miss. 1956).

RESEARCH REFERENCES

ALR.

Vacancy or nonoccupancy of building as affecting its character as "dwelling" as regards arson. 44 A.L.R.2d 1456.

What constitutes "burning" to justify charge of arson. 28 A.L.R.4th 482.

Pyromania and the criminal law. 51 A.L.R.4th 1243.

Am. Jur.

5 Am. Jur. 2d, Arson and Related Offenses §§ 1 et seq.

2 Am. Jur. Trials, Investigating Particular Crimes §§ 2-8 (arson).

13 Am. Jur. Trials, Defending Minor Felony Cases §§ 1 et seq.

19 Am. Jur. Trials, Preparation and Trial of Arson Case, §§ 1 et seq.

Practice References.

Ronald L. Schoenberg, Criminal Law Deskbook (Matthew Bender).

§ 97-17-7. Arson; third degree; personal property.

Any person who wilfully and maliciously sets fire to or burns or causes to be burned, or who aids, counsels or procures the burning of any personal property of whatsoever class or character; (such property being of the value of twenty-five dollars and the property of another person), shall be guilty of arson in the third degree and upon conviction thereof, be sentenced to the penitentiary for not less than one nor more than three years.

HISTORY: Codes, 1942, § 2008; Laws, 1932, ch. 272.

Cross References — Reporting arson incidents, see § 83-5-89.

Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see § 97-43-1 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Sentence.

1. In general.

Felony murder as a capital crime by definition required that there be two felonies, the homicide being the intentional or unintentional product of the other felony. The elements set out in the indictment against defendant only charged one felony, that defendant killed the victim by setting the victim on fire and that act was not a capital offense; in order for defendant to have been charged with capital murder, defendant must have been charged with arson by setting the house trailer or sofa on fire and that defendant killed the victim (defendant's husband) as a result. Buckley v. State, 875 So. 2d 1110, 2004 Miss. App. LEXIS 586 (Miss. Ct. App. 2004).

A count in an indictment charging that defendant burned a house and designated personalty therein, charges two offenses. State v. Freeman, 90 Miss. 315, 43 So. 289, 1907 Miss. LEXIS 49 (Miss. 1907).

2. Sentence.

Motion for post-conviction relief was granted in a case where defendant pled guilty to third degree arson for setting fire to a mattress in his jail cell because his five-year sentence was in excess of the statutory maximum under Miss. Code Ann. § 97-17-7. White v. State, 940 So. 2d 958, 2006 Miss. App. LEXIS 781 (Miss. Ct. App. 2006).

RESEARCH REFERENCES

ALR.

What constitutes "burning" to justify charge of arson. 28 A.L.R.4th 482.

Pyromania and the criminal law. 51 A.L.R.4th 1243.

Am. Jur.

5 Am. Jur. 2d, Arson and Related Offenses §§ 1 et seq.

2 Am. Jur. Trials, Investigating Particular Crimes §§ 2-8 (arson).

13 Am. Jur. Trials, Defending Minor Felony Cases §§ 1 et seq.

19 Am. Jur. Trials, Preparation and Trial of Arson Case, §§ 1 et seq.

Practice References.

Ronald L. Schoenberg, Criminal Law Deskbook (Matthew Bender).

§ 97-17-9. Arson; fourth degree; attempt to burn.

(1) Any person who wilfully and maliciously attempts to set fire to or attempts to burn or to aid, counsel or procure the burning of any of the buildings or property mentioned in the foregoing sections, or who commits any act preliminary thereto, or in furtherance thereof, shall be guilty of arson in the fourth degree and upon conviction thereof be sentenced to the penitentiary for not less than one nor more than two years or fined not to exceed one thousand dollars.

(2) The placing or distributing of any flammable, explosive or combustible material or substance, or any device in any building or property mentioned in the foregoing sections in an arrangement or preparation with intent to eventually, wilfully and maliciously set fire to or burn same, or to procure the setting fire to or burning of same shall, for the purposes of this section constitute an attempt to burn such building or property.

HISTORY: Codes, 1942, § 2009; Laws, 1932, ch. 272.

Cross References — Reporting arson incidents, see § 83-5-89.

Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see § 97-43-1 et seq.

JUDICIAL DECISIONS

1. In general.

Weight of the evidence was sufficient to convict defendant of conspiracy to commit arson in violation of Miss. Code Ann. § 97-1-1 and attempted arson in violation of Miss. Code Ann. § 97-17-9 because an accomplice's testimony that he and defendant entered into an agreement for him to burn the victim's vehicle was uncontradicted; in addition to the testimony of the accomplice was the of other witnesses who provided additional evidence of defendant's animosity towards the victim. Bradford v. State, 102 So. 3d 312, 2012 Miss. App. LEXIS 505 (Miss. Ct. App. 2012).

Evidence was sufficient to convict defendant of conspiracy to commit arson in violation of Miss. Code Ann. § 97-1-1 and attempted arson in violation of Miss. Code Ann. § 97-17-9 because the jury could conclude from an accomplice's testimony that he and defendant entered into an agreement for him to burn the victim's vehicle; the accomplice told the same basic story to the police that he told to the jury, and nothing in the record indicated that the accomplice's testimony was unreasonable, inconsistent, or impeached. Bradford v. State, 102 So. 3d 312, 2012 Miss. App. LEXIS 505 (Miss. Ct. App. 2012).

In a prosecution for arson indictments couched in the language of this section were sufficient to charge defendant with the crime of fourth-degree arson, despite the fact that they did not charge an overt act toward commission of the crime with which defendant was charged, where the statutory language in the indictments plainly and fully informed defendant of the nature and the causes of the charges against him. Jackson v. State, 420 So. 2d 1045, 1982 Miss. LEXIS 2172 (Miss. 1982).

RESEARCH REFERENCES

ALR.

Vacancy or nonoccupancy of building as affecting its character as "dwelling" as regards arson. 44 A.L.R.2d 1456.

Pyromania and the criminal law. 51 A.L.R.4th 1243.

Am. Jur.
5 Am. Jur. 2d, Arson and Related Offenses §§ 1 et seq.
2 Am. Jur. Trials, Investigating Particular Crimes §§ 2-8 (arson).
13 Am. Jur. Trials, Defending Minor Felony Cases §§ 1 et seq.
19 Am. Jur. Trials, Preparation and Trial of Arson Case, §§ 1 et seq.

CJS.
6A C.J.S., Arson § 18.

Practice References.
Ronald L. Schoenberg, Criminal Law Deskbook (Matthew Bender).

§ 97-17-11. Arson; insured property.

Any person who wilfully and with intent to injure or defraud the insurer sets fire to or burns or attempts so to do or who causes to be burned or who aids, counsels or procures the burning of any building, structure or personal property, of whatsoever class or character, whether the property of himself or of another, which shall at the time be insured by any person, company or corporation against loss or damage by fire, shall be guilty of a felony and upon conviction thereof, be sentenced to the penitentiary for not less than one (1) nor more than ten (10) years.

HISTORY: Codes, 1942, § 2010; Laws, 1932, ch. 272; Laws, 1986, ch. 377, eff from and after July 1, 1986.

Cross References — State fire marshal, see §§ 45-11-1 et seq.
Reporting arson incidents, see § 83-5-89.
Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see § 97-43-1 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Indictment.
3. Evidence.

1. In general.
The inability to recover on fire insurance policies is no defense of prosecution of named insured for statutory offense of wilfully burning an insured building with intent to defraud insurer. Brower v. State, 217 Miss. 425, 64 So. 2d 576, 1953 Miss. LEXIS 447 (Miss. 1953).

One convicted of arson was properly sentenced under statute in effect when arson was committed, instead of under repealing statute enacted before trial prescribing lighter penalty, in absence of contrary provision in repealing statute. Byrd v. State, 165 Miss. 30, 143 So. 852, 1932 Miss. LEXIS 277 (Miss. 1932).

2. Indictment.
The fact that this section might also have covered and made unlawful the conduct of the defendant did not preclude his being charged under § 97-17-5, the second degree arson statute, provided the indictment fairly charged him with the violation of the latter statute. Weaver v. State, 497 So. 2d 1089, 1986 Miss. LEXIS 2660 (Miss. 1986).

Indictment charging burning of building with intent to injure insurance company sufficiently alleged ownership of house and that defendant knew of insurance. State v. Ingram, 166 Miss. 543, 146 So. 638, 1933 Miss. LEXIS 356 (Miss. 1933).

3. Evidence.
A prior arson conviction might be admissible for impeachment purposes as a crime involving dishonesty or false state-

ment in situations, for example, where the defendant burned a building as part of a scheme to defraud an insurance company. However, where an arson conviction was admitted for impeachment purposes and the prosecution failed to offer prima facie evidence that the arson involved fraud, dishonesty, false statement or other elements suggesting a propensity for lying, the case would be reversed and remanded for a new trial on all issues. McInnis v. State, 527 So. 2d 84, 1988 Miss. LEXIS 248 (Miss. 1988), overruled in part, White v. State, 785 So. 2d 1059, 2001 Miss. LEXIS 44 (Miss. 2001).

In prosecution for wilful and felonious burning of a church, other evidence and confession were sufficient to establish a corpus delicti and sustain conviction. Brower v. State, 217 Miss. 425, 64 So. 2d 576, 1953 Miss. LEXIS 447 (Miss. 1953).

Circumstantial evidence showing beyond reasonable doubt that house was burned by persons employed by defendant to burn it held sufficient to sustain arson conviction. Byrd v. State, 165 Miss. 30, 143 So. 852, 1932 Miss. LEXIS 277 (Miss. 1932).

That state in arson prosecution for burning of insured property failed to introduce policy to show that automobile was insured against fire held not error, existence of insurance being amply established by other evidence. Gipson v. State, 162 Miss. 480, 139 So. 868, 1932 Miss. LEXIS 160 (Miss. 1932).

Evidence in arson prosecution for burning of insured property, held sufficient to establish corpus delicti, as regards admissibility of confession. Gipson v. State, 162 Miss. 480, 139 So. 868, 1932 Miss. LEXIS 160 (Miss. 1932).

That missing parts of automobile were found in place indicated in confession of defendant was strong proof that crime had been committed in connection therewith. Gipson v. State, 162 Miss. 480, 139 So. 868, 1932 Miss. LEXIS 160 (Miss. 1932).

Evidence held sufficient to establish defendant's guilt. Gipson v. State, 162 Miss. 480, 139 So. 868, 1932 Miss. LEXIS 160 (Miss. 1932).

Admitting letter, proof of loss, and bill of sale, if incompetent because not identified as bearing signature of defendant, held harmless; defendant's guilt being clear. Gipson v. State, 162 Miss. 480, 139 So. 868, 1932 Miss. LEXIS 160 (Miss. 1932).

RESEARCH REFERENCES

ALR.

Vacancy or nonoccupancy of building as affecting its character as "dwelling" as regards arson. 44 A.L.R.2d 1456.

Pyromania and the criminal law. 51 A.L.R.4th 1243.

Am. Jur.

5 Am. Jur. 2d, Arson and Related Offenses §§ 3, 19.

2 Am. Jur. Trials, Investigating Particular Crimes § 68 (insurance fraud).

19 Am. Jur. Trials, Preparation and Trial of Arson Case, §§ 1 et seq.

CJS.

6A C.J.S., Arson § 2, 22, 23.

Practice References.

Ronald L. Schoenberg, Criminal Law Deskbook (Matthew Bender).

§ 97-17-13. Arson; willfully or negligently firing woods, marsh, meadow, etc.; restitution of fire suppression costs.

(1) If any person willfully, maliciously, and feloniously sets on fire any woods, meadow, marsh, field or prairie, not his own, he is guilty of a felony and shall, upon conviction, be sentenced to the State Penitentiary for not more than two (2) years nor less than one (1) year, or fined not less than Two Hundred Dollars ($200.00) nor more than One Thousand Dollars ($1,000.00), or both, in the discretion of the court.

(2)(a) If any person recklessly or with gross negligence causes fire to burn any woods, meadow, marsh, field or prairie, not his own, he is guilty of a misdemeanor and shall, on conviction, be fined not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00), or imprisoned in the county jail not more than three (3) months, or both, in the discretion of the court.

(b) If a person has a brush or debris pile or other material which is or was being burned and reasonable and prudent efforts were not taken to prevent the spread of the fire onto the lands of another shall be evidence that such person recklessly or with gross negligence caused the land to burn.

(3) In addition to the penalties provided in this section, upon conviction, a person shall be ordered to reimburse and pay in restitution directly to any organized fire suppression agency recognized by the Mississippi Forestry Commission all the costs the agency incurred related to the suppression and abatement of the fire.

HISTORY: Codes, Hutchinson's 1848, ch. 13, art. 5(1); 1857, ch. 28, art. 1; 1871, § 2741; 1880, § 2816; 1892, § 1091; 1906, § 1172; Hemingway's 1917, § 901; 1930, § 928; 1942, § 2157; Laws, 1954, ch. 222, §§ 1, 2; Laws, 1960, ch. 243; Laws, 2005, ch. 495, § 2, eff from and after July 1, 2005.

Cross References — Judge's charge to grand jury with respect to state forest fire laws, see § 13-5-47.

Imposition and collection of separate laboratory analysis fee in addition to any other assessments and costs imposed by statute on every individual convicted of a felony in a case where Crime Laboratory provided forensic science or laboratory services in connection with the case, see § 45-1-29.

Mississippi Prescribed Burning Act not to limit civil or criminal liability provided for in this section, see § 49-19-307.

Tort of firing woods, see § 95-5-25.

Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see § 97-43-1 et seq.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

In a prosecution for setting fire to a field, where the defendant was tried as a principal on a theory that he was an accessory before the fact, but the only evidence of his participation in the crime consisted in the fact that he was observed sitting in an automobile stopped adjacent to a field which two other men were in the act of firing, and when someone gave an order to put out the fire, the two young men returned to defendant's car and he drove away, such evidence, while sufficient for submission of the case to the jury, left the defendant's guilt in such serious doubt that he would be granted a new trial. Russell v. Ralston Purina Co., 234 So. 2d 50, 1970 Miss. LEXIS 1398 (Miss. 1970).

The appearance of a forestry commission employee, who had investigated a forest fire and talked to the witnesses, but had no personal knowledge of the facts, did not constitute an improper influence on the grand jury which indicted the defendant on a charge of feloniously firing woods not his own. Case v. State, 220 So. 2d 289, 1969 Miss. LEXIS 1447 (Miss. 1969).

The fact that a forestry commission employee, who investigated a forest fire and talked to the witnesses but had no personal knowledge of the facts, testified before the grand jury that he brought the case up in Justice of the Peace Court and had the witnesses there for the preliminary hearing, did not place him in the category of a special prosecutor employed to assist with the prosecution, and hence his appearance before the grand jury was not an improper influence. Case v. State, 220 So. 2d 289, 1969 Miss. LEXIS 1447 (Miss. 1969).

RESEARCH REFERENCES

ALR.

Pyromania and the criminal law. 51 A.L.R.4th 1243.

Am. Jur.

35A Am. Jur. 2d, Fires §§ 5, 6.

19 Am. Jur. Trials, preparation and trial of arson case, §§ 1 et seq.

Law Reviews.

Ogletree, A primer concerning industrial timber litigation with emphasis upon Mississippi law. 59 Miss. L. J. 387, Fall 1989.

§ 97-17-14. Aggravated assault upon fire fighter, law enforcement officer or emergency medical personnel by injury-causing arson.

Any person or persons who willfully, feloniously and maliciously set fire to or burn or cause to be burned or who aid, counsel or procure the burning of any commercial or residential building, whether occupied, unoccupied or vacant or any kitchen, shop, barn, stable, outhouse, vehicle, or wood, meadow, marsh, field or prairie, whether the property of the person or persons setting the fire or of another, and thereby cause serious bodily injury to a firefighter, law enforcement officer or any emergency medical personnel while said firefighter, law enforcement officer or emergency personnel is acting within the scope of his duty and office, whether said injury shall be intentional or unintentional, shall be guilty of aggravated assault and upon conviction thereof shall be punished by a fine of not more than One Thousand Dollars ($1,000.00) or by imprisonment for not more than ten (10) years in the Penitentiary or by both such fine and imprisonment.

HISTORY: Laws, 1986, ch. 394; Laws, 2001, ch. 402, § 1, eff from and after July 1, 2001.

RESEARCH REFERENCES

ALR.

Single act affecting multiple victims as constituting multiple assaults or homicides. 8 A.L.R.4th 960.

What constitutes “burning” to justify charge of arson. 28 A.L.R.4th 482.

Admissibility, in criminal case, of evidence discovered by warrantless search in connection with fire investigation – post – Tyler cases. 31 A.L.R.4th 194.

Am. Jur.

2 Am. Jur. Trials, Investigation of Particular Crimes §§ 2-8.

19 Am. Jur. Trials, Preparation and Trial of Arson Case §§ 1 et seq.

CJS.

6A C.J.S., Assault & Battery § 86, 87.

§ 97-17-15. Boundary landmarks; altering or destroying.

If any person shall knowingly cut, fell, alter, remove, or destroy, or shall cause to be cut, felled, altered, removed, or destroyed, any boundary tree, or other boundary landmark, to the wrong of another person, he shall, on conviction, be fined not more than two hundred dollars nor less than fifty dollars.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 1(64); 1857, ch. 64, art. 189; 1871, § 2711; 1880, § 2900; 1892, § 1172; 1906, § 1250; Hemingway's 1917, § 980; 1930, § 1008; 1942, § 2239.

Cross References — Resurveying and re-establishing original marks, see §§ 19-27-13, 19-27-15.

RESEARCH REFERENCES

Law Reviews.

Ogletree, A primer concerning industrial timber litigation with emphasis upon Mississippi law. 59 Miss. L. J. 387, Fall 1989.

§ 97-17-17. Brands of saw-logs; altering or defacing.

If any person shall knowingly and wilfully alter or deface the mark or brand of any saw-log, the property of another, without his consent, and with intent to deprive the owner of his property, he shall, on conviction, be fined not exceeding one hundred dollars, or imprisoned in the county jail not more than three months, or both.

HISTORY: Codes, 1892, § 980; 1906, § 1056; Hemingway's 1917, § 784; 1930, § 800; 1942, § 2026; Laws, 1882, p. 144.

RESEARCH REFERENCES

Am. Jur.

52 Am. Jur. 2d, Logs and Timber §§ 4, 13.

§§ 97-17-19 and 97-17-21. Repealed.

Repealed by Laws, 1996, ch. 519, §§ 2-3, eff from and after passage (approved April 11, 1996).

§ 97-17-19. [Codes, Hutchinson's 1848, ch. 64, art. 12, Title 4(11); 1857, ch. 64, art. 45; 1871, § 2522; 1880, § 2738; 1892, § 991; 1906, § 1068; Hemingway's 1917, § 796; 1930, § 812; 1942, § 2038]

§ 97-17-21. [Codes, Hutchinson's 1848, ch. 64, art. 12, Title 4(10); 1857, ch. 64, art. 44; 1871, § 2521; 1880, § 2737; 1892, § 990; 1906, § 1066; Hemingway's 1917, § 794; 1930, § 810; 1942, § 2036]

Editor's Notes — Former § 97-17-19 was entitled: Burglary; breaking and entering dwelling.

Former § 97-17-21 was entitled: Burglary; inhabited dwelling.

RESEARCH REFERENCES

Practice References.

Ronald L. Schoenberg, Criminal Law Deskbook (Matthew Bender).

§ 97-17-23. Burglary; breaking and entering inhabited dwelling; home invasion.

(1) Every person who shall be convicted of breaking and entering the dwelling house or inner door of such dwelling house of another, whether armed with a deadly weapon or not, and whether there shall be at the time some human being in such dwelling house or not, with intent to commit some crime therein, shall be punished by commitment to the custody of the Department of Corrections for not less than three (3) years nor more than twenty-five (25) years.

(2) Every person who shall be convicted of violating subsection (1) under circumstances likely to terrorize any person who is actually occupying the house at the time of the criminal invasion of the premises shall be punished by imprisonment in the custody of the Department of Corrections for not less than ten (10) years nor more than twenty-five (25) years.

HISTORY: Codes, 1906, § 1067; Hemingway's 1917, § 795; 1930, § 811; 1942, § 2037; Laws, 1996, ch. 519, § 1; Laws, 2008, ch. 307, § 1, eff from and after July 1, 2008.

Cross References — Burglary of dwelling, defined as crime of violence, see § 97-3-2.

Enhancement of offenses listed in 99-19-401(2) if the instrumentality used in the commission of the 99-19-401(2) offense was initially obtained in the course of the commission of the crime(s) provided for in this section, see § 99-19-401.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Sufficiency of evidence.
3. — Invited entry.
4. Indictments.
5. Dwelling house of another.
6. Jury instructions.
7. Sentence.
8. Intent.
9. New trial denied.
10. Guilty plea.

1. In general.

Defendant's conviction for burglary of a dwelling was not against the overwhelming weight of the evidence because an officer saw defendant inside the broken-into house and witnessed him intentionally steal a game console from the house; and that testimony was not in dispute nor was it circumstantial. Chism v. State, 253 So. 3d 343, 2018 Miss. App. LEXIS 72 (Miss. Ct. App.), cert. denied, 252 So. 3d 595, 2018 Miss. LEXIS 388 (Miss. 2018).

Appellant did not experience double jeopardy because he was never prosecuted twice for the same offense; burglary and sexual battery required proof of different facts, and thus, even if the prosecution had pursued the sexual-battery charge, appellant would not have been subjected to double jeopardy since he pleaded guilty to burglary. Stamps v. State, 151 So. 3d 248, 2014 Miss. App. LEXIS 651 (Miss. Ct. App. 2014).

In a case where defendant was convicted of several crimes relating to the arson and burglary of a residence, his double jeopardy rights were not violated due to the fact that some of the elements of the crimes overlapped; each of the crimes involved required proof of an additional fact that the other did not. McCollins v. State, 952 So. 2d 305, 2007 Miss. App. LEXIS 167 (Miss. Ct. App. 2007).

Burglary conviction was upheld where acquittal on armed robbery charges did not invoke double jeopardy concerns because defendant was not previously tried for either of the charges and because the burglary charge did not contain the same elements, such as exhibiting a deadly weapon and putting the victim in fear; similarly, the burglary included elements not found in armed robbery, such as breaking and entering. Smallwood v. State, 930 So. 2d 448, 2006 Miss. App. LEXIS 399 (Miss. Ct. App. 2006).

After his conviction for burglary of an inhabited dwelling, defendant first argued that the trial court should have given a circumstantial evidence instruction because the prosecution did not have a confession or an eyewitness. However, defendant had failed to offer such an instruction and it was not the obligation of the trial court to have prepared and submitted same. Harris v. State, 908 So. 2d 868, 2005 Miss. App. LEXIS 530 (Miss. Ct. App. 2005).

In a case where defendants were convicted of burglary of a dwelling and simple assault, the evidence at trial did not support a lesser included offense instruction of trespass because (1) had defendants succeeded in their defense that they had permission to enter the dwelling, they would not have been guilty of trespass; (2) once defendants realized they were not welcome on the property and that they would not receive permission to enter the home, they broke into and entered the home when they punched through the tape covering the hole by the front door in order to unlock the door from the inside; (3) the existence of the marks on the rear entrance where a tire iron was used to attempt entry supported the more serious offense of burglary rather than trespass; and (4) there was evidence of intent to commit an assault when defendants entered the home based on their previous threats made to the second victim, their use of force to enter the home, their use of violence inside the home, and one defendant's actions of hurling a large rock into the second victim's windshield when he tried to drive away. Arbuckle v. State, 894 So. 2d 619, 2004 Miss. App. LEXIS 1080 (Miss. Ct. App. 2004), cert. dismissed, 904 So. 2d 184, 2005 Miss. LEXIS 397 (Miss. 2005).

Where defendant was convicted of burglary of a dwelling (no threats or force toward persons were shown), his allegation of error concerned the introduction of a small kitchen knife that police found on him when he was arrested. However, as to relevancy and admissibility, the record did not indicate any abuse of discretion by the trial judge in admitting the evidence. Clayton v. State, 893 So. 2d 246, 2004 Miss. App. LEXIS 718 (Miss. Ct. App. 2004), cert. denied, 893 So. 2d 1061, 2005 Miss. LEXIS 101 (Miss. 2005).

Where three accomplices kicked in the door of a home and stole several items, defendant was properly convicted of burglarizing a home based on evidence that he was seen driving the getaway car. Deloney v. State, 874 So. 2d 445, 2004 Miss. App. LEXIS 477 (Miss. Ct. App. 2004).

Where defendant's 20-year sentence with only 14 years actually to serve was within the statutory parameters and was not grossly disproportionate to the crime, defendant failed to show that his sentence was disproportionately harsh for the crime charges, and therefore it was not cruel and unusual. Alston v. State, 841 So. 2d 215, 2003 Miss. App. LEXIS 248 (Miss. Ct. App. 2003).

The crime of murder can be the underlying element required to establish the crime of burglary. Stevens v. State, 806 So. 2d 1031, 2001 Miss. LEXIS 234 (Miss. 2001), cert. denied, 537 U.S. 1232, 123 S. Ct. 1384, 155 L. Ed. 2d 195, 2003 U.S. LEXIS 1755 (U.S. 2003).

The defendant was properly sentenced under this section, rather than under former § 97-17-19, where (1) former § 97-17-19 was repealed and this section was enacted in 1996, (2) the offense at issue occurred in 1997, and (3) although the original indictment cited former § 97-17-19, the indictment was amended to cite this section. Terry v. State, 755 So. 2d 41, 1999 Miss. App. LEXIS 609 (Miss. Ct. App. 1999).

Proof that a house was occupied at the time of the burglary is not required. Wilkerson v. State, 724 So. 2d 1089, 1998 Miss. App. LEXIS 1048 (Miss. Ct. App. 1998).

A burglarized house was a "dwelling" within the meaning of the statute where the owner of the house was an elderly woman who lived there for four months of every year, received her mail there, and kept personal property there, even though the burglary occurred during the eight months that she lived elsewhere. Wilkerson v. State, 724 So. 2d 1089, 1998 Miss. App. LEXIS 1048 (Miss. Ct. App. 1998).

The word "crime" in the burglary statutes includes misdemeanors as well as felonies. Ashley v. State, 538 So. 2d 1181, 1989 Miss. LEXIS 24 (Miss. 1989).

Jury could find that incident charged as burglary happened at night, where it was well established in Mississippi that jury was entitled to consider not only facts as testified to by witnesses, but also all inferences that reasonably and logically could be deduced from facts in evidence, and testimony from several witnesses indicated that incident occurred around 7:00 in evening, and jury was properly instructed as to law and heard testimony of witnesses. Burney v. State, 515 So. 2d 1154, 1987 Miss. LEXIS 2905 (Miss. 1987), but see McCarty v. State, 554 So. 2d 909, 1989 Miss. LEXIS 499 (Miss. 1989).

Defendant's motion to dismiss, on double jeopardy grounds, an indictment charging him with armed burglary of an inhabited dwelling at nighttime was improperly denied, where there was a common nucleus of operative facts from which arose the prosecution for burglary and an earlier prosecution for rape, where defendant had earlier been acquitted of the rape, where the not guilty verdict in the rape trial was well within the evidence, where defendant's only defense at the rape trial was that another person committed the crime, where the jury could not rationally have acquitted him on any other basis, and where the state offered substantial evidence during the rape trial to show that he broke and entered the rape victim's home. Sanders v. State, 429 So. 2d 245, 1983 Miss. LEXIS 2499 (Miss. 1983).

The trial court's failure to define the word "night," as used in this section, for the jury's guidance would not require reversal of the defendant's conviction for burglary, where the indictment and proof were sufficient to charge and support the defendant's conviction for burglary as defined by former § 97-17-21. Harkins & Co. v. Elliott, 415 So. 2d 678, 1982 Miss. LEXIS 2309 (Miss. 1982), cert. denied, 459 U.S. 1107, 103 S. Ct. 733, 74 L. Ed. 2d 956, 1983 U.S. LEXIS 2898 (U.S. 1983).

An indictment which charged a defendant with breaking and entering into the dwelling house of the victim with intent to commit rape satisfied the statutory requirement of "intent to commit some crime" in a dwelling. Jefferson v. State, 386 So. 2d 200, 1980 Miss. LEXIS 2041 (Miss. 1980).

2. Sufficiency of evidence.

Defense counsel was not ineffective for failing to present evidence that defendant and the victim were meeting in an unprofessional manner and failing to object to the State's not introducing the items stolen during the burglary into evidence because no rule of law required the items taken in a burglary to be entered into evidence; the State alleged that defendant broke into the house with the intent to steal, but actually stealing items was not an element of burglary; the items were described particularly through direct testimony by two witnesses who personally saw them in the vehicle defendant was using; and an officer specifically identified his daughter's antique clarinet in the photograph. Moore v. State, 287 So. 3d 189, 2020 Miss. LEXIS 1 (Miss. 2020).

Defendant's conviction for burglary was not against the overwhelming weight of the evidence because the door to the victim's house had been kicked in and valuable property belonging to the victim and her daughter was found in a vehicle owned by defendant's mother and parked in the driveway; defendant was found hiding in a storage room attached to the victim's house; and little evidence supported the defense theory that defendant was there with permission. Moore v. State, 287 So. 3d 189, 2020 Miss. LEXIS 1 (Miss. 2020).

State proved beyond a reasonable doubt the essential elements of dwelling-house burglary because the side door of the victim's home was closed and secured at the time it was entered and the items stolen, and the home was a "dwelling house" because the victim's testimony showed that she resided in the home three or four nights a week while remodeling it and that she considered it to be her primary house. Burford v. State, — So. 3d —, 2020 Miss. App. LEXIS 484 (Miss. Ct. App. Aug. 25, 2020).

Evidence showed that defendant had the prior intent to steal before her boyfriend entered the home because she testified that she assisted her boyfriend commit the crime by loading stolen items into the vehicle, she fled from the police after the crime, and stolen items were recovered from the vehicle and the residence of defendant and her boyfriend. Burford v. State, — So. 3d —, 2020 Miss. App. LEXIS 484 (Miss. Ct. App. Aug. 25, 2020).

Evidence that a phone recovered from the crime scene belonged to defendant's brother, who testified he let defendant use it on the evening in question, and that defendant's DNA was found on items collected from the crime scene was sufficient to establish the essential elements of burglary of a dwelling and sexual battery. Gilmore v. State, 282 So. 3d 601, 2019 Miss. App. LEXIS 323 (Miss. Ct. App. 2019).

Evidence was sufficient to support defendant's burglary conviction because the victim identified defendant as the person who entered her home unlawfully through her window and who ultimately assaulted her, the victim identified him at trial and previously through a photo lineup, there was testimony that defendant had approached two other young girls inquiring about coming through their windows, and there was also evidence that he had attempted to kidnap one of them in a similar fashion. Sullivan v. State, 281 So. 3d 1146, 2019 Miss. App. LEXIS 267 (Miss. Ct. App. 2019).

Trial court properly sentenced defendant as a habitual offender to 25 years in prison after a jury found him guilty of burglary of a dwelling because two of his accomplices testified that they went to the victim's house with defendant and one other person, made their way inside the house, and stole several items, and, after the State rested its case in chief, defendant chose not to offer any proof and rested. Alston v. State, 287 So. 3d 182, 2019 Miss. LEXIS 406 (Miss. 2019).

Evidence was insufficient to convict defendant of burglary of a dwelling because, while the prosecutor referred to the juvenile offender's statement and the officer's testimony regarding defendant's involvement in the burglary as impeachment evidence, she ultimately sought to use it as substantive evidence, but unsworn prior inconsistent statements could be used for impeachment purposes only; and the substantive evidence submitted, excluding the impeachment testimony, was insufficient to establish that defendant was involved in the burglary. Ward v. State, 285 So. 3d 136, 2019 Miss. LEXIS 392 (Miss. 2019).

Defendant's conviction for burglary of a dwelling was not against the overwhelming weight of the evidence because an officer saw defendant inside the broken-into house and witnessed him intentionally steal a game console from the house; and that testimony was not in dispute nor was it circumstantial. Chism v. State, 253 So. 3d 343, 2018 Miss. App. LEXIS 72 (Miss. Ct. App.), cert. denied, 252 So. 3d 595, 2018 Miss. LEXIS 388 (Miss. 2018).

Sufficient proof supported the jury's verdict that defendant broke into a hunting camp with intent to commit a crime inside because defendant broke into the camp through an unlocked door after spying through a window and seeing what he claims was evidence of his wife's unfaithfulness; defendant's own testimony supported that he lacked permission from one of the camp's agents or occupants to be there that night. Bowman v. State, 283 So.

3d 154, 2019 Miss. LEXIS 359 (Miss. 2019).

Defendant was properly convicted of burglary of a dwelling because the State sufficiently proved his wife was residing in a hunting camp when defendant broke in, and that was all the law required; the allegation in the indictment that the hunting camp was in fact owned by another was mere surplusage, which the State nonetheless proved at trial beyond a reasonable doubt, and the State did not have to prove the hunting camp was the wife's permanent, continuous residence. Bowman v. State, 283 So. 3d 154, 2019 Miss. LEXIS 359 (Miss. 2019).

In a case in which defendant was convicted of burglary of a dwelling and possession of a firearm by a convicted felon, there was sufficient evidence to warrant a finding that defendant was aware of the presence of guns and was intentionally in possession of them. A witness stated he observed defendant handle the guns after they were taken from a residence. Weaver v. State, 282 So. 3d 1217, 2019 Miss. App. LEXIS 482 (Miss. Ct. App. 2019).

Evidence was sufficient to convict defendant of burglary of a dwelling because the alarm system on the house was triggered by a break-in; an officer was able to arrive on the scene quickly and see defendant exiting the house through the broken basement door with stolen goods in his possession; the bag defendant was holding contained property later identified as belonging to the resident of the home; the basement door that defendant admittedly entered and exited without the victim's permission was severely damaged; and the inside of the home showed signs consistent with forced entry and burglary. Chism v. State, 253 So. 3d 343, 2018 Miss. App. LEXIS 72 (Miss. Ct. App.), cert. denied, 252 So. 3d 595, 2018 Miss. LEXIS 388 (Miss. 2018).

There was sufficient evidence to support defendant's conviction for burglary under Miss. Code Ann. § 97-17-23(1), including defendant's confession, the victim's testimony regarding items taken, and defendant's possession of the stolen items approximately one block from the victim's house Baker v. State, 259 So. 3d 1281, 2018 Miss. App. LEXIS 600 (Miss. Ct. App. 2018).

Trial court properly denied defendant's motion for a judgment notwithstanding the verdict because he was properly convicted of home-invasion burglary where he admittedly entered the victim's mother's house without knocking or permission, an investigating officer's testimony and photographic evidence supported the mother's and the victim's testimony, and reasonable and fair-minded jurors could have concluded that defendant's verbal threats coupled with the overt act of beating on the victim's bedroom door and breaking his window evidenced his intent to assault the victim. Shepherd v. State, 270 So. 3d 962, 2018 Miss. App. LEXIS 457 (Miss. Ct. App. 2018).

Defendant's burglary conviction was supported by the evidence, as he admitted entering the victim's home through an unlocked window, armed with a pipe wrench, and he knew that the order of protection forbidding him from going to the victim's home was still in place, plus the victim testified that she never told defendant that he could enter her home. Beasley v. State, 251 So. 3d 746, 2017 Miss. App. LEXIS 619 (Miss. Ct. App. 2017).

State submitted sufficient evidence for the jury to find that defendant broke into and entered the victim's house with the intent to commit larceny. Heisser v. State, 213 So. 3d 544, 2016 Miss. App. LEXIS 708 (Miss. Ct. App. 2016).

Evidence was sufficient to convict defendant of burglary of a dwelling with the intent to commit sexual battery and the verdict was not against the overwhelming weight of the evidence because the victim testified that the front door was closed but unlocked; a breaking could be conducted by an act of force, regardless of how slight, necessary to enter a building, such as turning a knob; the victim testified that she fell asleep on the couch and then woke up to defendant standing over her – naked and rubbing her hips; when she asked defendant what he was doing, he fled; and a DNA test confirmed that the semen found on the underwear in the victim's yard belonged to defendant. Doss v. State, 212 So. 3d 886, 2016 Miss. App. LEXIS 508 (Miss. Ct. App. 2016), cert. denied, — So. 3d —, 2017 Miss. LEXIS 98 (Miss. 2017).

Verdict finding defendant guilty of burglary of a dwelling was not against the overwhelming weight of the evidence because the jury heard the State's witnesses testify regarding their own plea deals, reduced charges, and sentences in connection with the burglary of the victims' house; an accomplice testified that he and defendant burglarized the victims' house; an officer testified that he determined the cash he gave an individual to purchase the stolen shotgun from defendant was the same cash that was found in defendant's possession when he was arrested; and defendant's letter he wrote to the victims, apologizing for hurting them and asking for forgiveness, was admitted into evidence. Jenkins v. State, 198 So. 3d 468, 2016 Miss. App. LEXIS 509 (Miss. Ct. App. 2016).

Evidence that the victim did not invite defendant into her home, defendant hid in the home and grabbed the victim from behind, and the two struggled in multiple rooms, leaving items knocked out of place, before the rape occurred, was sufficient for the jury to find the elements of burglary of a dwelling and forcible rape proven beyond a reasonable doubt Rollings v. State, 192 So. 3d 1133, 2016 Miss. App. LEXIS 343 (Miss. Ct. App. 2016).

Evidence was sufficient to convict defendant of burglary of a dwelling because he was found in the victim's home without permission, there was evidence of a breaking and entering, intent could be inferred from the circumstances, and allowing the verdict to stand would not sanction an unconscionable injustice. Woods v. State, 192 So. 3d 347, 2015 Miss. App. LEXIS 641 (Miss. Ct. App. 2015).

Admitting hearsay evidence that defendant exited a house did not require reversal of defendant's burglary conviction because, inter alia, the witness provided non-hearsay testimony that the witness saw defendant enter the house, establishing the crime of burglary. Talley v. State, 164 So. 3d 516, 2015 Miss. App. LEXIS 275 (Miss. Ct. App. 2015).

Evidence supported the conclusion that defendant's fingerprint was left at the time of the burglary because the fingerprint could not have been left on the window without first removing the screen, and the evidence was sufficient to support defendant's burglary conviction; a positive identification from a fingerprint on the window that was used to gain entry to the burglarized dwelling, and evidence tending to reasonably exclude the hypothesis that the fingerprint was left at a time other than that of the crime, are sufficient to support a conviction. Cavitt v. State, 159 So. 3d 1199, 2015 Miss. App. LEXIS 144 (Miss. Ct. App. 2015).

Trial court properly denied defendants motions for a directed verdict and a judgment notwithstanding the verdict because there was sufficient evidence to convict him of burglary and rape where the shoes found in his bedroom closet matched a footprint left at the crime scene and his DNA was found on the shoes and the victim's thigh. Harris v. State, 169 So. 3d 949, 2014 Miss. App. LEXIS 390 (Miss. Ct. App. 2014).

Evidence was sufficient to convict defendant of burglary because, while two witnesses who testified as to defendant's involvement with them in the burglary could not establish where the burglary occurred, evidence regarding items taken made it reasonable for the jury to infer that the apartment defendant and the others burglarized was the victim's apartment. Terry v. State, 126 So. 3d 946, 2013 Miss. App. LEXIS 796 (Miss. Ct. App. 2013).

Evidence was sufficient to convict defendant of burglary and the verdict was not against the overwhelming weight of the evidence because, even if jury believed that defendant did not personally go into victim's apartment, he was an accomplice as he supplied one of the guns used in the robbery and provided a place to hide the stolen items. Gardner v. State, 121 So. 3d 309, 2013 Miss. App. LEXIS 580 (Miss. Ct. App. 2013).

Testimony from the victim, police detectives, and an eyewitness who had identified defendant as the person who broke into the victim's house and stole a television, was sufficient to convict defendant of burglary of a dwelling, and defendant's conviction was not against the overwhelming weight of the evidence. Luster v. State, 133 So. 3d 849, 2013 Miss. App. LEXIS 460 (Miss. Ct. App. 2013), cert.

denied, 133 So. 3d 818, 2014 Miss. LEXIS 153 (Miss. 2014).

Although the victim of a burglary incorrectly described the perpetrator as approximately 18 years old, the evidence was sufficient for a jury to determine beyond a reasonable doubt that defendant was the person who committed the crime as the victim had sufficient time to observe defendant, she picked defendant out of a photo lineup, and when defendant was arrested, he had the same gold teeth the victim noted in her description of the perpetrator to the authorities. Bell v. State, 125 So. 3d 75, 2013 Miss. App. LEXIS 280 (Miss. Ct. App.), cert. denied, 123 So. 3d 450, 2013 Miss. LEXIS 563 (Miss. 2013).

Victim's testimony that at the time she discovered defendant in her boyfriend's apartment, that the front door was locked, that there was evidence of forced entry through the apartment's window and that defendant was holding the victim's wallet when discovered, was sufficient to support his conviction and the denial of his motion for directed verdict and for judgment notwithstanding the verdict. Bell v. State, 125 So. 3d 75, 2013 Miss. App. LEXIS 280 (Miss. Ct. App.), cert. denied, 123 So. 3d 450, 2013 Miss. LEXIS 563 (Miss. 2013).

Victim's eyewitness testimony that defendant entered her dwellling without her knowledge or permission was sufficient to identify defendant as the person who was in her home and was sufficient to convict him of burglary of a dwelling. Conner v. State, 138 So. 3d 158, 2013 Miss. App. LEXIS 226 (Miss. Ct. App. 2013), aff'd, 138 So. 3d 143, 2014 Miss. LEXIS 246 (Miss. 2014).

Evidence that defendant possessed fruits of a burglary on the same day it occurred, and concealed the true origin of one of the stolen items, was sufficient to support his conviction of burglary in violation of Miss. Code Ann. § 97-17-23(1), Taylor v. State, 110 So. 3d 776, 2013 Miss. LEXIS 148 (Miss. 2013).

Evidence presented at trial was sufficient to support defendant's convictions of aggravated assault (Miss. Code Ann. § 97-3-7(2)(a)) and burglary of a dwelling (Miss. Code Ann. § 97-17-23), as it established that he drove two men to pick up a crowbar and then drove them to the victim's house, where they used the crowbar to pry open the door and assault the victim; moreover, his confession established his involvement in the crimes. Whitaker v. State, 114 So. 3d 725, 2012 Miss. App. LEXIS 481 (Miss. Ct. App. 2012), cert. denied, 2013 Miss. LEXIS 331 (Miss. June 6, 2013).

Defendant's conviction for burglary was supported by sufficient evidence because defendant's theory of an unidentified third man was presented to the jury, but the jury rejected it, and defendant's continued flight evidenced a guilty conscience; defendant's tattoos were consistent with an officer's observation of the man who fled the scene, and the evidence of his heavy, dark tattooing provided the jury with a basis to resolve any inconsistency in the officer's testimony. Dison v. State, 61 So. 3d 975, 2011 Miss. App. LEXIS 268 (Miss. Ct. App. 2011), cert. dismissed, 131 So. 3d 578, 2014 Miss. LEXIS 40 (Miss. 2014).

There was insufficient evidence to adjudicate a juvenile a delinquent child for the act of burglary, a violation of Miss. Code Ann. § 97-17-23(1), where there was no evidence that the juvenile broke and entered the dwelling house, or had any intent to commit any crime therein; thus, neither element of burglary was proven beyond a reasonable doubt. C.K.B. v. Harrison County Youth Court, 36 So. 3d 1267, 2010 Miss. LEXIS 306 (Miss. 2010).

Defendant's convictions for house burglary, aggravated assault, armed robbery, and auto theft were proper because the evidence was sufficient. In part, defendant severely beat the victim, demanded that she give him her purse, and then took her purse, a gun, and a set of keys to the victim's vehicle. The victim later identified defendant, based upon her own independent recollection, in a photographic lineup. Brunner v. State, 37 So. 3d 645, 2009 Miss. App. LEXIS 755 (Miss. Ct. App. 2009), cert. denied, 36 So. 3d 455, 2010 Miss. LEXIS 323 (Miss. 2010).

Where defendant was convicted of burglary after breaking into the home of a woman whom he had dated and who told defendant that she did not want to see him again, the jury verdict finding defendant guilty of burglary was not against the weight of the evidence because, although defendant claimed that the window through which he allegedly climbed was too small to accommodate his size, the jury saw photographs of the window and the resolution of factual disputes was within its province. Further, officers found a chair outside that had been placed in front of the window through which defendant allegedly climbed, the screen looked as if it had been torn off or pried open, defendant was found near the victim's home, and as he was arrested, defendant stated that he was just trying to get the victim's attention. Alesich v. State, 26 So. 3d 1080, 2009 Miss. App. LEXIS 379 (Miss. Ct. App. 2009), cert. denied, 27 So. 3d 404, 2010 Miss. LEXIS 52 (Miss. 2010).

Along with the testimony of the victim and codefendant, the jury also was presented with the testimony of multiple sheriff's deputies, forensic analysts, and with that of a witness, who stated that defendant admitted to him his involvement in the crimes; after hearing all the evidence and being adequately instructed on the applicable law, the jury rendered its decision in due course, and any rational trier of fact could have found the essential elements of the crimes beyond a reasonable doubt. Christmas v. State, 10 So. 3d 413, 2009 Miss. LEXIS 144 (Miss. 2009).

Defendant's conviction for burglary of a dwelling, in violation of Miss. Code Ann. § 97-17-23(1), was supported by the evidence because defendant crashed through a glass window and advanced briskly upon one victim with hands raised, in what was described as a threatening gesture; hence, the evidence was sufficient to infer that defendant intended to commit an assault under Miss. Code Ann. § 97-3-7(1). Walker v. State, 21 So. 3d 663, 2009 Miss. App. LEXIS 182 (Miss. Ct. App.), cert. denied, 20 So. 3d 680, 2009 Miss. LEXIS 578 (Miss. 2009).

Evidence as sufficient to support defendant's convictions of burglary, kidnapping, and sexual battery where the father of the two-year-old victim testified that he went to pick up his girlfriend from work and left his children secured in their home, that he encountered the 17-year-old defendant while en route and told him where he was going, that he discovered upon his return that his home had been broken into and that his daughter was missing, that he found defendant with his daughter in an abandoned structure nearby, and that, upon examination, the girl's genital area was red, bleeding, and scratched and where a physician who examined the victim testified that the girl's vagina was red, swollen, and irritated but that there was no evidence of infection as the cause. Because the two-year-old victim was too short to have unlocked the door to the family home by herself and had never walked out of the home unassisted, the evidence permitted the jury to reasonably infer that defendant had broken into the family residence, removed the victim therefrom without her father's permission, and sexually assaulted her. Moton v. State, 999 So. 2d 1287, 2009 Miss. App. LEXIS 20 (Miss. Ct. App. 2009).

Reasonable jurors could have found beyond a reasonable doubt that defendant kicked in the victim's door where there was no evidence that the victim invited defendant or the unidentified man in her home, and every reasonable inference arising from defendant's actions and words immediately prior to the breaking in of the door would support the conclusion that it was indeed defendant who did so. Hope v. State, 992 So. 2d 666, 2008 Miss. App. LEXIS 642 (Miss. Ct. App. 2008).

There was no merit to defendant's claim that a trial court peremptorily found him guilty of burglary by prohibiting him from arguing self-defense where the underlying crime that he was charged with to elevate his murder charge to capital murder under Miss. Code Ann. § 97-3-19(2)(e) was burglary under Miss. Code Ann. § 97-17-23, and Mississippi adhered to the common law rule that an aggressor was precluded from pleading self-defense. As a result, the trial court did not err in denying defendant's attempt to argue self-defense at trial. Beale v. State, 2 So. 3d 693, 2008 Miss. App. LEXIS 548 (Miss. Ct. App. 2008), cert. denied, 999 So. 2d 1280, 2009 Miss. LEXIS 90 (Miss. 2009).

Evidence was insufficient to support defendant's burglary conviction where neither a theft from an open, freestanding structure nor a possible entry of a freestanding shed satisfied the elements of Miss. Code Ann. § 97-17-23 (Rev. 2006), the shed did not meet the Miss. Code Ann. § 97-17-31 (Rev. 2006) definition of dwelling house, and there was no breaking and entering involved in the open carport. Jefferson v. State, 977 So. 2d 431, 2008 Miss. App. LEXIS 165 (Miss. Ct. App. 2008).

Evidence was sufficient to find defendant committed a burglary in a capital murder case as there was a pry mark on the front door, the front door was left ajar, a television was missing, and drawers were left open, and defendant was found in possession of the victim's personal property shortly after the burglary. Evidence also showed that defendant broke into the victims's house, killed her, and stole some of her personal belongings because he desired money to purchase drugs, and further testimony established that he sold the television and used the proceeds to purchase crack. Young v. State, 981 So. 2d 308, 2007 Miss. App. LEXIS 749 (Miss. Ct. App. 2007), cert. denied, 979 So. 2d 691, 2008 Miss. LEXIS 206 (Miss. 2008).

Although victims could not positively identify defendant as a second gunman who entered their apartment, they were able to provide police with a description, a stocking cap, clothing, and a gun; a reasonable jury could have found defendant guilty of burglary and robbery beyond a reasonable doubt. Guyton v. State, 962 So. 2d 722, 2007 Miss. App. LEXIS 524 (Miss. Ct. App. 2007).

State presented sufficient evidence to convict defendant of burglary of a dwelling, a violation of Miss. Code Ann § 97-17-23, given the victim's recognition of defendant as the person in her house, defendant's admission that he was in the house, and the testimony that the victim's purse and money were missing after defendant fled her house. Parker v. State, 962 So. 2d 25, 2007 Miss. LEXIS 429 (Miss. 2007).

Lower court, which denied appellant's motions for new trial and judgment notwithstanding the verdict, did not err in finding that there was sufficient evidence to convict appellant of burglary of a dwelling where appellant confessed to the crime and appellant was found in possession of items stolen from the burglarized home within an hour of the robbery when he tried to pawn the stolen goods at a pawn shop. Hill v. State, 952 So. 2d 326, 2007 Miss. App. LEXIS 164 (Miss. Ct. App.), cert. dismissed, 958 So. 2d 1232, 2007 Miss. LEXIS 322 (Miss. 2007).

Where the suspect broke into a locked basement in the doctor's house and stole $6,000 in pre-1959 currency, defendant was observed in a travel agency spending strange-looking currency printed prior to 1959, and defendant was a frequent guest in the doctor's home and told a friend that he had taken the money from the doctor's home; the direct and circumstantial evidence was legally sufficient to support defendant's conviction of burglary and larceny of a dwelling under Miss. Code Ann. § 97-17-23. Sandefer v. State, 952 So. 2d 281, 2007 Miss. App. LEXIS 105 (Miss. Ct. App. 2007).

Evidence was sufficient to support defendant's conviction of burglary of a dwelling because: (1) there was evidence that defendant entered an outer door and then an interior door to access the victim's living area; (2) the victim testified that both the outer and interior doors had been locked when she went to sleep that night; and (3) the inner door bore signs of having been forced open. Magee v. State, 966 So. 2d 173, 2007 Miss. App. LEXIS 120 (Miss. Ct. App.), cert. denied, 966 So. 2d 172, 2007 Miss. LEXIS 567 (Miss. 2007).

Evidence was sufficient to support a guilty verdict for attempted burglary because, inter alia: (1) the victim testified that she heard someone removing the screen from her bedroom window and breathing heavily; (2) once the scene was investigated by the victim and the officers, the screen was found removed from the window; and (3) the victim testified to having seen defendant in her backyard shortly after hearing the window screen tampering; thus, the trial court did not err in denying defendant's motion for a directed verdict, his request for a peremptory jury instruction, and his motion for a judgment notwithstanding the verdict. Brown v. State, 961 So. 2d 720, 2007 Miss. App. LEXIS 13 (Miss. Ct. App. 2007).

Owner testified that he locked the doorknob and shut the door after allowing defendant to enter his mobile home, and both the owner and a victim testified that defendant declined to sit down and that she stood facing them with her back to the door; according to the victim, defendant had her hand on the doorknob before three masked men rushed through the door, and she never saw any of the masked men point a gun at defendant. Also, immediately after the men left, defendant refused to help the victim untie the owner; thus, the evidence was sufficient, and defendant's convictions for burglary of a dwelling, robbery, kidnapping, and auto theft were not against the weight of the evidence. Brown v. State, 926 So. 2d 283, 2006 Miss. App. LEXIS 268 (Miss. Ct. App. 2006).

Trial court did not err in denying defendant's motion for a directed verdict and his motion for judgment notwithstanding the verdict; given the State's evidence, reasonable and fair-minded jurors could have concluded that defendant was guilty of burglary of a dwelling. Also, the pictures of defendant's car were consistent with the description given by the victim to the deputies, the victim identified defendant as the intruder, and clothes were found that matched the description of the intruder's clothes provided by the victim. Coleman v. State, 926 So. 2d 205, 2006 Miss. App. LEXIS 264 (Miss. Ct. App. 2006).

Defendant's motion for a new trial was properly denied where the evidence was sufficient to support a rape conviction given the victim's uncontradicted testimony; defendant's act of opening the porch door was clearly sufficient to constitute a breaking, and entry through the porch was required to gain entrance into the victim's home. Davis v. State, 910 So. 2d 1228, 2005 Miss. App. LEXIS 615 (Miss. Ct. App. 2005).

Evidence demonstrated that the elements of burglary under Miss. Code Ann. § 97-17-23 were met where the other participants testified that defendant waited inside while the others ransacked the house searching for valuables and defendant shared in the proceeds. Stewart v. State, 909 So. 2d 52, 2005 Miss. LEXIS 514 (Miss. 2005).

Evidence sufficed for defendant's convictions for burglary of an inhabited dwelling and sale of a stolen firearm. The two-month time period, between the burglary and the date defendant was found in possession of the gun, distracted from the inference that he committed the burglary, but as to other inferences, he had made reference to other stolen items (never recovered), he had possession of the stolen firearm, and he had sought to sell same to an informant in a concealed setting. Harris v. State, 908 So. 2d 868, 2005 Miss. App. LEXIS 530 (Miss. Ct. App. 2005).

Evidence offered was sufficient to convict defendant of attempted burglary of a dwelling and was not against the weight of the evidence because (1) defendant was seen with a knife outside the victim's house; (2) defendant banged on the victim's front door with such force that objects on the walls of the entrance hall crashed to the floor and the peephole in the door was catapulted out of it; (3) no reasonable person with a broken-down car who needed help would approach a house in the same manner; (4) defendant had burglarized many homes in the past; and (5) defendant's actions on the day in question undoubtedly showed that he was attempting to burglarize the victim's dwelling. Jones v. State, 904 So. 2d 149, 2005 Miss. LEXIS 221 (Miss. 2005).

Defendant's conviction for house burglary was not against the overwhelming weight of the evidence because (1) the victim testified that someone entered her home, took her purse and her car keys, and stole her car; (2) two witnesses testified to defendant's involvement in the crime; (3) the investigating officer testified that he saw the victim's car near the house where defendant was staying; and (4) defendant's accomplice was later seen driving the car. Harris v. State, 907 So. 2d 972, 2005 Miss. App. LEXIS 148 (Miss. Ct. App.), cert. denied, 910 So. 2d 574, 2005 Miss. LEXIS 453 (Miss. 2005).

Defendant's actions at the first victim's home were sufficient to support defendants' convictions for the crimes of burglary and simple assault because (1) defendants were present at the home for the sole purpose to obtain money; (2) when the victims did not voluntarily allow defendants into the home, defendants went into a rage and broke into the dwelling and assaulted two of the victims; (3) one of the defendants then proceeded to commit a further act of violence when he burst the windshield of one of the second victim's vehicle with a large rock; (4) the other defendant continued to threaten and intimidate the first victim until she surrendered her paycheck whereupon defendants left the premises and cashed the check in order to satisfy a debt; and (5) the jury could reasonably infer that defendants formed the intent to assault those inside the home immediately upon gaining entry to the home. Arbuckle v. State, 894 So. 2d 619, 2004 Miss. App. LEXIS 1080 (Miss. Ct. App. 2004), cert. dismissed, 904 So. 2d 184, 2005 Miss. LEXIS 397 (Miss. 2005).

Evidence was sufficient to support defendant's conviction for burglary of a dwelling where, although nothing was actually stolen from the house, the jury could have inferred from the testimony that defendant broke into the house with the intent to steal. Clay v. State, 881 So. 2d 323, 2004 Miss. App. LEXIS 859 (Miss. Ct. App. 2004), cert. denied, 893 So. 2d 1061, 2005 Miss. LEXIS 96 (Miss. 2005).

The State presented testimony from witnesses who identified defendant as the person who committed both the crimes charged. The first victim testified that while working at the convenience store, an individual later identified as defendant, held a box cutter near her neck, and took money out of the cash register and in the burglary case, the victim testified that she was awakened by her cousin's screaming and directly confronted defendant; defendant's motions for a directed verdict, judgment notwithstanding the verdict, and for a new trial, were therefore properly denied. Hill v. State, 912 So. 2d 991, 2004 Miss. App. LEXIS 1129 (Miss. Ct. App. 2004), cert. denied, 921 So. 2d 344, 2005 Miss. LEXIS 680 (Miss. 2005).

There was sufficient evidence to support a conviction for burglary of a dwelling house because an officer saw defendant leave the residence through a patio door after receiving a burglary complaint, the door had been forcibly opened, two televisions were moved towards an exit in the home, and a victim testified that the house had not been left in that condition. Phinisee v. State, 864 So. 2d 988, 2004 Miss. App. LEXIS 19 (Miss. Ct. App. 2004).

Where a neighbor saw defendant entering and exiting the victim's home, a deputy testified that defendant admitted to being in the victim's home, and the victim testified that she was unable to identify any particular items as having been stolen but noticed that the drawers to her chest had been rifled and were in disarray, the State offered substantial evidence on each element of burglary. Cortez v. State, 876 So. 2d 1026, 2003 Miss. App. LEXIS 1140 (Miss. Ct. App. 2003), cert. denied, 878 So. 2d 66, 2004 Miss. LEXIS 859 (Miss. 2004), dismissed, 9 So. 3d 445, 2009 Miss. App. LEXIS 209 (Miss. Ct. App. 2009).

Though the testimony of defendant and the woman conflicted about his intent in entering the woman's home, the jury was entitled to believe the woman's testimony, as opposed to defendant's testimony, that defendant forced his way into her house, placed a makeshift noose around her neck, and threatened to kill her, as defendant admitted entering her house and backing her against a wall; accordingly, the evidence was legally sufficient to support defendant's conviction for burglary as the evidence was not such that no reasonable juror could have assigned guilt to defendant on that charge. Ferguson v. State, 865 So. 2d 369, 2003 Miss. App. LEXIS 792 (Miss. Ct. App. 2003), cert. denied, 866 So. 2d 473, 2004 Miss. LEXIS 76 (Miss. 2004).

Evidence that police found defendant's fingerprint in a residence that was burglarized and that defendant pawned items that were taken from the residence was sufficient to sustain defendant's conviction for burglary on an inhabited dwelling, and the appellate court refused to review defendant's claim that his sentence of 22 years' confinement was too harsh. Brown v. State, 875 So. 2d 214, 2003 Miss. App. LEXIS 1192 (Miss. Ct. App. 2003), cert. denied, 876 So. 2d 376, 2004 Miss. LEXIS 697 (Miss. 2004).

Evidence was sufficient to allow a jury to resolve issues of credibility against defendant, and return a verdict of guilty; defendant admitted through his testimony that he broke a window at the victims' home, his fingerprints were found on the glass that matched the prints on the card bearing defendant's information from the police, and the victims both testified that defendant admitted that he committed the offense. Bridges v. State, 841 So. 2d 1189, 2003 Miss. App. LEXIS 291 (Miss. Ct. App. 2003).

Evidence that the victim found defendant in the victim's home without permission or explanation and that defendant fled the home when confronted by the victim was sufficient for the jury to infer that defendant had the intent to commit theft inside the home and was sufficient to support defendant's conviction of burglary of a dwelling despite the fact that nothing was taken from the home and very little inside the home had been disturbed; identification of defendant by the victim following defendant's arrest was more than sufficient. Crawford v. State, 839 So. 2d 594, 2003 Miss. App. LEXIS 156 (Miss. Ct. App. 2003).

Verdict was not against the overwhelming weight of the evidence where defendant was not only found in close proximity to the burglarized home, but was actually found by the victim at the home that was burglarized; in addition, defendant was in close proximity to the stolen property and the items in his car provided a reasonable inference that the items were in his possession, which was legally sufficient for the jury to infer guilt of burglary. O'Neal v. State, 840 So. 2d 750, 2003 Miss. App. LEXIS 185 (Miss. Ct. App. 2003).

State proved that defendant forcibly entered the victim's dwelling and that the evidence did not show that the entry was voluntary; even if the door was unlocked or if only slight force was needed to gain entry, such entry was forcible for the purposes of the burglary statute, and there was no evidence that the victim invited defendant into his home. Wheeler v. State, 826 So. 2d 731, 2002 Miss. LEXIS 290 (Miss. 2002).

Even though the defendant was acquitted of two counts of assault, the evidence was sufficient to support a conviction for burglary based on evidence that the defendant burst through a door to enter a trailer and that he intended to commit an assault. Jones v. State, 785 So. 2d 1099, 2001 Miss. App. LEXIS 199 (Miss. Ct. App. 2001).

Evidence was insufficient to establish that the building which the defendant was alleged to have burglarized was a dwelling within the meaning of the statute where (1) it was uncontradicted that the owner of the home, together with his wife, had permanently ceased to live in the structure and had moved to another county where they were living temporarily in a camper on site while they completed construction work on a new home, (2) there was no evidence even faintly suggesting that the owners had any intention of returning to the structure and resuming their residence there, and (3) there was some testimony that the owners' daughter had been living in the home while she worked as a schoolteacher in the area, but the only evidence concerning the daughter's residency in the home was supplied by her father. Carr v. State, 770 So. 2d 1025, 2000 Miss. App. LEXIS 484 (Miss. Ct. App. 2000).

Evidence was sufficient to support a conviction for burglary where (1) a neighbor saw the defendant and a coperpetrator enter the victim's home, (2) responding police officers saw that the double doors to the home had been forced open while the dead-bolt was still extended to lock the doors, (3) the officers found the defendant and his coperpetrator in the master bedroom and bathroom, (4) the defendant said that they were in the house to get food, but the kitchen was at the opposite end of the house, and (5) in the bedroom, drawers were open and items were scattered on the dresser and bed. Pryor v. State, 771 So. 2d 958, 2000 Miss. App. LEXIS 322 (Miss. Ct. App. 2000).

Evidence was sufficient to sustain a conviction where (1) the defendant broke into and entered the victim's house without permission by removing a screen and climbing through a window, and (2) the defendant intended to locate the victim's purse and steal money from her once he found it. Robinson v. State, 757 So. 2d 1051, 2000 Miss. App. LEXIS 122 (Miss. Ct. App. 2000).

Evidence was sufficient to support a conviction for burglary of a dwelling where evidence showed that the defendant was in recent possession of a video cassette recorder stolen from the dwelling. Potts v. State, 759 So. 2d 500, 2000 Miss. App. LEXIS 190 (Miss. Ct. App. 2000).

The court refused to affirm a burglary conviction on the theory of constructive breaking where the jury was instructed only on the theory of an actual physical breaking and each theory requires a different set of facts. Genry v. State, 1999 Miss. App. LEXIS 716 (Miss. Ct. App. Dec. 14, 1999), op. withdrawn, sub. op., 767 So. 2d 302, 2000 Miss. App. LEXIS 426 (Miss. Ct. App. 2000).

Evidence was sufficient to support a conviction for burglary, notwithstanding that the home that was entered was only occupied occasionally during the owner's visits to Mississippi, where the owner's daughter lived in the home on a permanent basis while attending high school and had only left the house a few months prior to the burglary, and where testimony revealed that the home contained clothing, a bed, a sofa, a microwave oven and other necessities. Washington v. State, 753 So. 2d 475, 1999 Miss. App. LEXIS 668 (Miss. Ct. App. 1999).

There was sufficient evidence to support a conviction for burglary where (1) the defendant denied that he broke into the victim's house to steal, and a witness in his behalf testified that the defendant told him that he was going to the victim's house to pick up some money, rather than commit burglary, but (2) the defendant's accomplice indicated that he and the defendant broke into the victim's house with the intention to burglarize it. Brown v. State, 726 So. 2d 248, 1998 Miss. App. LEXIS 1119 (Miss. Ct. App. 1998).

Evidence was sufficient to support conviction for burglary of an inhabited dwelling. Ward v. State, 726 So. 2d 223, 1998 Miss. App. LEXIS 1111 (Miss. Ct. App. 1998).

3. — Invited entry.

Motion for a directed verdict was properly denied in a case involving burglary of a dwelling under Miss. Code Ann. § 97-17-23 because there was sufficient evidence to contradict defendant's assertion that he was invited into a victim's apartment; police noted a shoe print on the front door of the apartment near the knob, and the door frame was cracked. Even if he was invited into the apartment, the breaking and entering element still applied to the victim's bedroom door; the victim testified defendant put his fist into it, there was a hole in that door, and there appeared to be blood smeared on it as well. Jenkins v. State, 995 So. 2d 839, 2008 Miss. App. LEXIS 677 (Miss. Ct. App. 2008).

4. Indictments.

Defendant's purported conviction for robbery was plain error because he had been indicted for burglary, not the entirely distinct crime of robbery, which was not a lesser-included offense of burglary, and a court could not make, alter, or substantively amend a felony indictment; defendant's conviction for robbery was a plain, clear, and obvious error that violated his fundamental rights and constituted a manifest miscarriage of justice. Pace v. State, 242 So. 3d 107, 2018 Miss. LEXIS 199 (Miss. 2018).

Although defendant maintained that the second indictment should have been dismissed because the crimes of burglary and capital murder were both predicated on his commission of an assault, which was subject to a two-year statute of limitations for prosecution, defendant's argument was without merit as the passage of time would never bar prosecution against any person for the offenses of murder, aggravated assault, or burglary. Clark v. State, 233 So. 3d 832, 2017 Miss. App. LEXIS 129 (Miss. Ct. App.), cert. denied, — So. 3d —, 2017 Miss. LEXIS 518 (Miss. 2017).

Defendant's indictment neglected to allege an essential element of the crime of burglary of a dwelling (with intent to commit some crime therein) under Mississippi law, and the indictment was constructively altered by a jury instruction because it contained the element "with the intent to commit to steal valuable things once inside," which was not charged in the indictment. Accordingly, the indictment failed to charge defendant with a crime under Mississippi law. Vale v. State, 243 So. 3d 205, 2017 Miss. App. LEXIS 502

(Miss. Ct. App. 2017), cert. dismissed, — So. 3d —, 2018 Miss. LEXIS 231 (Miss. 2018).

Defendant's second indictment was sufficient because it specified that he committed burglary by breaking and entering the victim's trailer with the intent to commit the crime of assault, with or without any design to effect the death of the victim; and it alleged each offense necessary to charge defendant with capital murder: assault, burglary, and, ultimately, murder. Clark v. State, 233 So. 3d 832, 2017 Miss. App. LEXIS 129 (Miss. Ct. App.), cert. denied, — So. 3d —, 2017 Miss. LEXIS 518 (Miss. 2017).

In a case involving burglary of a dwelling, an indictment was not insufficient based on the fact that it omitted the word "burglarious" because it contained the essential elements of the crime where it stated that defendant unlawfully, willfully, and feloniously broke and entered the dwelling house of the victim with the intent to commit the crime of larceny. Smith v. State, 150 So. 3d 122, 2014 Miss. App. LEXIS 611 (Miss. Ct. App. 2014).

Defendant's capital murder conviction under Miss. Code Ann. § 97-3-19(2)(e) was reversed where his indictment was insufficient to charge him with capital murder or burglary because it failed to assert the underlying offense that comprised the burglary; it also failed to charge him with murder or manslaughter where it omitted the term "unlawfully" or the phrase "without the authority of law." Jackson v. State, 2010 Miss. LEXIS 170 (Miss. Apr. 1, 2010).

Jury instruction did not amend the indictment charging defendant with burglary because the indictment charged defendant with breaking into the victim's dwelling, intending to steal the victim's property, while the jury instruction tracked the statutory language and indicated that burglary was the unauthorized entry into the home of another with the intent to commit a crime therein. Because theft was a crime, the indictment properly notified defendant of the crime with which he was charged, and the jury was properly instructed. Alesich v. State, 26 So. 3d 1080, 2009 Miss. App. LEXIS 379 (Miss. Ct. App. 2009), cert. denied, 27 So. 3d 404, 2010 Miss. LEXIS 52 (Miss. 2010).

Post-conviction relief was denied in a case where a plea was entered to burglary of a dwelling under Miss. Code Ann. § 97-17-23 because the record showed that defendant was indicted for this charge; all charges were contained in the same indictment and all offenses were part of a related series of events. Robertson v. State, 959 So. 2d 597, 2007 Miss. App. LEXIS 452 (Miss. Ct. App. 2007).

Defendant's motion for post-conviction relief was denied on the basis that an indictment was flawed because this issue was not preserved for review; notwithstanding the bar, the issue was meritless because the indictment stated that a crime occurred "at a certain dwelling owned and occupied," which was sufficient to reflect a burglary of an occupied dwelling, and the transcript of the guilty plea showed that defendant was pleading guilty to this crime, and that he knowing, understandingly, freely, and voluntarily entered a plea to such. Ausbon v. State, 959 So. 2d 592, 2007 Miss. App. LEXIS 441 (Miss. Ct. App. 2007).

Where defendant was invited to a doctor's home where he stole money, he was properly indicted and convicted of burglary under Miss. Code Ann. § 97-17-23, because § 97-17-23, by its plain wording, applies to "every person"; an invited guest is a person, and therefore a guest falls within the ambit of § 97-17-23. Sandefer v. State, 952 So. 2d 281, 2007 Miss. App. LEXIS 105 (Miss. Ct. App. 2007).

Indictment against defendant described the charge of attempted burglary by citing the burglary statute, providing the details of the alleged attempted burglary, and supplying the details concerning the failure to complete the burglary; thus, the indictment against defendant stated the essential facts, and fully notified him of the nature and cause of the charges brought against him, and therefore the trial court did not err in denying the motion to quash the indictment. Brown v. State, 961 So. 2d 720, 2007 Miss. App. LEXIS 13 (Miss. Ct. App. 2007).

Defendant was originally indicted for attempted breaking and entering, but the indictment was properly amended when the amendment was one of form, not substance, and defendant had notice; had the original indictment stated "Attempted Burglary, Miss. Code Ann. § 97-1-7" or failed to provide "Burglary of a Dwelling, Miss. Code Ann. § 97-17-23," then unquestionably the amendment would have been one of substance rather than form, and the supreme court would have been compelled to reverse the trial court's conviction and sentence, but this indictment, however, was styled and read "Burglary of a Dwelling, Miss. Code Ann. § 97-17-23." Spears v. State, 942 So. 2d 772, 2006 Miss. LEXIS 656 (Miss. 2006).

Burglary conviction under Miss. Code Ann. § 97-17-23 was upheld where acquittal on armed robbery charges, brought under Miss. Code Ann. § 97-3-79, did not invoke the doctrine of merger because it was not, as alleged, impossible for defendant to have committed the armed robbery without first committing the burglary. Smallwood v. State, 930 So. 2d 448, 2006 Miss. App. LEXIS 399 (Miss. Ct. App. 2006).

Where defendant was indicted for attempting to bugular a dwelling house, the trial court committed reversible error by allowing the State to amend the indictment to change the charge from "attempt to break and enter" to "break and enter." Defendant was clearly prejudiced because the defense that he had actually completed the crime was no longer available to him. Spears v. State, 942 So. 2d 812, 2005 Miss. App. LEXIS 735 (Miss. Ct. App. 2005), rev'd, 942 So. 2d 772, 2006 Miss. LEXIS 656 (Miss. 2006).

Defendant's sentence was within the statutory limits of the crime where the indictment was accurate, given that it plainly said that the building was a mobile home on the victim's property and charged that defendant broke into and entered the dwelling for the purpose of carrying away the property of the victim. Triplett v. State, 910 So. 2d 581, 2005 Miss. App. LEXIS 136 (Miss. Ct. App. 2005).

Inmate waived the argument that the inmate's indictment for burglary was defective due to the failure of the indictment to cite to the burglary statute, Miss. Code Ann. § 97-17-23, as this was a technical, nonjurisdictional flaw that the inmate waived with the guilty plea, and the failure to cite to the statute did not hinder the inmate's notice of the charges against the inmate. Battaya v. State, 861 So. 2d 364, 2003 Miss. App. LEXIS 1201 (Miss. Ct. App. 2003).

While the offense of burglary required an intended crime after breaking and entering the dwelling, it was sufficient that the intended crime of larceny was named in the indictment and inclusion of the elements of larceny in the indictment was not required. Webb v. State, 877 So. 2d 399, 2003 Miss. App. LEXIS 767 (Miss. Ct. App. 2003), cert. denied, 878 So. 2d 66, 2004 Miss. LEXIS 872 (Miss. 2004).

An indictment for burglary stated with the requisite particularity the underlying crime or intent where the indictment charged the defendant with burglary with the intent to commit assault. Booker v. State, 716 So. 2d 1064, 1998 Miss. LEXIS 140 (Miss. 1998).

5. Dwelling house of another.

Trailer which was broken into was a dwelling house, pursuant to Miss. Code Ann. § 97-17-23, because, while the trailer had other purposes as a shop and office, this fact did not prevent the trailer from being a dwelling. The resident had personal possessions at the trailer and the intent to live there, even if not full time. Kirkwood v. State, 53 So. 3d 7, 2010 Miss. App. LEXIS 48 (Miss. Ct. App. 2010), aff'd, in part, rev'd, 52 So. 3d 1184, 2011 Miss. LEXIS 36 (Miss. 2011).

Motion for a directed verdict was properly denied in a case involving burglary of a dwelling under Miss. Code Ann. § 97-17-23 because defendant did not show that he was a resident of a victim's apartment; defendant's name was not listed on any of the bills associated with the apartment, and he did not provide her with financial support. Even though he was a frequent invited guest, this did not rise to the level of being an actual dweller in the apartment. Jenkins v. State, 995 So. 2d 839, 2008 Miss. App. LEXIS 677 (Miss. Ct. App. 2008).

Where a hunting cabin was fully furnished and had food items, cooking supplies, appliances, and other living comforts and necessities, it constituted a dwelling under Miss. Code Ann. § 97-17-

23; therefore, post-conviction relief was denied because defendant was properly charged with burglary of a dwelling, and no evidence was presented by the owners of such due to the fact that defendant entered a guilty plea. Young v. State, 952 So. 2d 1031, 2007 Miss. App. LEXIS 183 (Miss. Ct. App. 2007).

In a postconviction proceeding following an inmate's conviction for burglary of a dwelling, there was no plain error in the inmate's trial counsel's failure to raise the issue of whether a vacant house that belonged to a nursing home resident was a "dwelling" because there was an intent to maintain the house for dwelling purposes as shown by its listing on the real estate market; thus, the inmate was not denied effective assistance of counsel. Sheffield v. State, 881 So. 2d 249, 2003 Miss. App. LEXIS 998 (Miss. Ct. App. 2003), cert. dismissed, 2005 Miss. LEXIS 87 (Miss. Feb. 3, 2005).

The defendant's conviction for burglary of a dwelling was reversed since there was insufficient proof that the site of the burglary qualified as a dwelling where there was no evidence that the property owner ever intended to return to the property to make it his dwelling. Pool v. State, 764 So. 2d 440, 2000 Miss. LEXIS 191 (Miss. 2000).

The fact that the refrigerator is unplugged and the stove non-functional does not prevent a building from being classified as a dwelling. Washington v. State, 753 So. 2d 475, 1999 Miss. App. LEXIS 668 (Miss. Ct. App. 1999).

One cannot be guilty of burglarizing one's own home and, therefore, where the evidence established that the defendant entered his own home, he was entitled to a directed verdict. Mitchell v. State, 720 So. 2d 492, 1998 Miss. App. LEXIS 589 (Miss. Ct. App. 1998).

6. Jury instructions.

Defendant's argument that the trial court reversibly erred by not giving jury instructions for the burglary charge was waived because defendant did not seek the instructions at trial. Bowman v. State, 283 So. 3d 154, 2019 Miss. LEXIS 359 (Miss. 2019).

In a case in which defendant was convicted of burglary of a dwelling, defendant was not entitled to a circumstantial evidence instruction because the State produced direct evidence to the gravamen of the offense charged in the form of eyewitness testimony as the officer's testimony put defendant inside and exiting the broken-into house while intentionally in the possession of stolen property. Chism v. State, 253 So. 3d 343, 2018 Miss. App. LEXIS 72 (Miss. Ct. App.), cert. denied, 252 So. 3d 595, 2018 Miss. LEXIS 388 (Miss. 2018).

Trial court properly instructed the jury regarding a sentence enhancement for burglary because the phrase "likely to terrorize" was self-explanatory and needed no definition. Johnson v. State, 242 So. 3d 145, 2017 Miss. App. LEXIS 335 (Miss. Ct. App. 2017), cert. denied, 246 So. 3d 69, 2018 Miss. LEXIS 190 (Miss. 2018).

In a burglary of a dwelling with the intent to commit sexual battery case, the trial court did not err by failing to instruct the jury on the elements of the intended crime of sexual battery because only the intent to commit some crime needed to be proven in order to establish the second element of burglary, and the State did not also need to prove the elements of the intended crime; sexual battery was commonly understood to mean sexual penetration with another person without his or her consent; and the victim testified that she fell asleep on the couch and then woke up to defendant standing over her – naked and rubbing her hips. Doss v. State, 212 So. 3d 886, 2016 Miss. App. LEXIS 508 (Miss. Ct. App. 2016), cert. denied, — So. 3d —, 2017 Miss. LEXIS 98 (Miss. 2017).

Jury was properly instructed as to defendant's burglary charge because (1) the jury was instructed the jury could find defendant guilty if the jury found defendant broke into and entered a home with the intent to commit the crime of larceny and/or assault therein, (2) the specific crime defendant allegedly committed was identified when the jury was instructed on the elements of burglary, and (3) a failure to instruct on the definition of larceny was not plain error, as "larceny" was used as a shorthand statement of the definition of larceny, and the jury did not need a formal definition to understand the meaning of larceny and to apply that meaning to the evidence, as use of "larceny" as "larceny" was commonly understood and was sufficient to define the requisite intent. White v. State, 195 So. 3d 765, 2016 Miss. LEXIS 281 (Miss. 2016).

Trial judge sufficiently instructed the jury that burglary in defendant's case meant feloniously entering the dwelling house of another with the intent to commit an assault. Moreover, the State of Mississippi presented sufficient evidence for the jury to find that defendant feloniously broke into the victim's house with the intent to assault. The fact that there were two statutory categories of assault was of no import as the burglary statute simply required the intent to commit some crime therein. Quinn v. State, 191 So. 3d 1227, 2016 Miss. LEXIS 203 (Miss. 2016).

Jury instructions on the elements of burglary of a dwelling did not plainly err because (1) the instructions identified the underlying crime defendant intended to commit as larceny and/or assault, (2) the jury was instructed on the elements of aggravated assault, (3) the jury could have found defendant intended to commit an assault, and (4) defendant's acquittal of aggravated assault was irrelevant to whether instructions on burglary elements plainly erred. White v. State, 195 So. 3d 801, 2015 Miss. App. LEXIS 369 (Miss. Ct. App. 2015), aff'd, 195 So. 3d 765, 2016 Miss. LEXIS 281 (Miss. 2016).

In a case involving burglary of a dwelling, defendant was not entitled to a jury instruction for a lesser non-included offense of receiving stolen property because the proper foundation was not laid where no evidence of the monetary value of a computer was presented. The indicted crime had no element of value. Smith v. State, 150 So. 3d 122, 2014 Miss. App. LEXIS 611 (Miss. Ct. App. 2014).

Trial court's jury instructions fairly, although not perfectly, instructed the jury on burglary because although the trial court should have instructed the jury on the elements of the intended crime in a burglary trial, the jury instructions correctly instructed the jurors that they could find defendant guilty of burglary if they found he broke and entered the victim's dwelling with the intent to steal. Conner v. State, 138 So. 3d 143, 2014 Miss. LEXIS 246 (Miss. 2014).

Trial judge incorrectly instructed the jury that breaking the plane of a door satisfied the force element of burglary of a dwelling because there was no act or force employed to effect an entrance when defendant merely walked through a raised, open garage door to take the victim's purse from her car. Watson v. State, 123 So. 3d 446, 2013 Miss. LEXIS 547 (Miss. 2013).

Where an indictment charging defendant with burglary in violaton of Miss. Code Ann. § 97-17-23(1) alleged he entered a dwelling with the intent to commit larceny therein, as he did not request a jury instruction on the elements of larceny, and those elements were not elements of the crime of burglary, the trial court did not plainly err by not giving such an instruction. Conner v. State, 138 So. 3d 158, 2013 Miss. App. LEXIS 226 (Miss. Ct. App. 2013), aff'd, 138 So. 3d 143, 2014 Miss. LEXIS 246 (Miss. 2014).

When there was direct evidence that a burglary had been committed but only circumstantial evidence that defendant was the burglar, defendant was entitled, in the absence of a circumstantial evidence instruction, to a two-theory instruction to the jury on what to do when the record supported two or more hypotheses of the crime committed. McInnis v. State, 61 So. 3d 872, 2011 Miss. LEXIS 196 (Miss. 2011).

Defendant was entitled to a circumstantial evidence instruction on charges of house burglary and grand larceny. Defendant's testimony that he tried to persuade friends not to commit the burglary and an officer's testimony that defendant was driving a stolen van in which stolen items were found was circumstantial, and no eyewitnesses were presented. Kirkwood v. State, 52 So. 3d 1184, 2011 Miss. LEXIS 36 (Miss. 2011).

7. Sentence.

Trial court did not err by finding defendant's burglary was a crime of violence because that did not violate defendant's constitutional rights to due process, trial by an impartial jury, or a jury finding guilt on all elements of the offense beyond a reasonable doubt. Bowman v. State, 283 So. 3d 154, 2019 Miss. LEXIS 359 (Miss. 2019).

Because burglary of a dwelling house was an enumerated crime of violence, defendant could not serve half of his ten-year sentence before being eligible for parole as the trial court believed, but instead, defendant would have to serve the entirety of his ten-year sentence; the trial court was under the erroneous impression that 50 percent parole eligibility applied to all of Miss. Code Ann. § 97-1-7, including the crimes enumerated in § 97-3-2(1). Bowman v. State, 283 So. 3d 154, 2019 Miss. LEXIS 359 (Miss. 2019).

Trial court should not have imposed a sentence of 10 years for burglary of a dwelling in a habitual offender case because the habitual offender statute required the trial court to impose the maximum term of imprisonment for burglary of a dwelling, which was 25 years. Moran v. State, 235 So. 3d 101, 2017 Miss. App. LEXIS 142 (Miss. Ct. App. 2017).

Neither the trial court's decision to sentence defendant to the maximum amount allowed by Miss. Code Ann. § 97-17-23, nor its subsequent decision to deny his plea-withdrawal request was an abuse of discretion because prior to accepting defendant's guilty plea, the trial court thoroughly queried him with regard to the voluntariness of his plea, carefully explained to him that whatever sentencing recommendation the State offered would not have to be accepted, and informed him that the trial court could impose any sentence allowed by law; defendant willfully acknowledged that he fully understood that the State's promise to recommend a sentence carried with it no guarantee that its recommendation would bind the trial court to a particular sentence upon a plea of guilty. Burrough v. State, 9 So. 3d 368, 2009 Miss. LEXIS 143 (Miss. 2009).

In a case where defendant was sentenced to eight years in prison with five years of post-release supervision after a guilty plea was entered to the crime of attempted burglary of a dwelling, a post-conviction relief motion was properly dismissed without an evidentiary hearing under Miss. Code Ann. § 99-39-11(2) because there was no ineffective assistance of counsel where jurisdiction was included in an indictment, the charges were not contradictory, an attempt charge was appropriate, and appellant inmate's other self-serving arguments were wholly unsupported by the record. Moreover, a sentence was not illegal since a suspended sentence was not required in addition to post-release supervision, the sentence imposed was within the range permitted, and the inmate was not misinformed regarding his appellate rights. McKinney v. State, 7 So. 3d 291, 2008 Miss. App. LEXIS 626 (Miss. Ct. App. 2008).

Motion for postconviction relief was properly dismissed without an evidentiary hearing in a case where a guilty plea was entered to the charge of burglary of an occupied dwelling because defendant offered no proof of what advice he was given about parole, other than the assertions made in the motion, and he was not eligible for such due to his conviction; also, defendant was told by a trial court that he was required to serve the full term of his sentence when he entered a guilty plea. Edge v. State, 962 So. 2d 81, 2007 Miss. App. LEXIS 461 (Miss. Ct. App. 2007).

Motion for post-conviction relief was summarily dismissed since defendant, who was 65 years old and had no prior record, was unable to show that his sentences for burglary and aggravated assault, which were within the ranges in Miss. Code Ann. § 97-17-23 and Miss. Code Ann. § 97-3-7 were grossly disproportionate; he could have received 45 years if the maximum terms had been run consecutively, and the facts showed that he broke into a house wielding a pistol and beat a victim. Denton v. State, 955 So. 2d 398, 2007 Miss. App. LEXIS 283 (Miss. Ct. App. 2007).

Defendant's sentence of 25 years' imprisonment for burglary of a dwelling was not illegal as the crime carried a maximum sentence of 25 years under Miss. Code Ann. § 97-17-23; defendant was well aware of the sentence the trial court would impose upon him as a result of his guilty plea. Martin v. State, 954 So. 2d 535, 2007 Miss. App. LEXIS 258 (Miss. Ct. App. 2007).

Appellant was properly sentenced pursuant to Miss. Code Ann. § 99-19-81 as a habitual offender following an attempted burglary conviction pursuant to Miss. Code Ann. § 97-17-23 because the trial court did not err in admitting his prior felony convictions, after analyzing them under Miss. R. Evid. 403; they were allowed by Miss. R. Evid. 404(b) as appellant's intent was greatly in issue. Carter v. State, 953 So. 2d 224, 2007 Miss. LEXIS 203 (Miss. 2007).

Trial court did not err by imposing sentences of five years for conspiracy, 25 years for burglary of a dwelling, five years for grand larceny, and 20 years for first degree arson, as these were all the maximum sentences allowed for these crimes. McCollins v. State, 952 So. 2d 305, 2007 Miss. App. LEXIS 167 (Miss. Ct. App. 2007).

Defendant's sentences of 30 years and 25 years in prison for his convictions of rape and burglary of a dwelling, to be served consecutively, did not constitute cruel and unusual punishment because the trial court imposed sentences within the statutory limits for the crimes, and a threshold comparison of defendant's sentence with his crimes did not raise an inference of gross disproportionality that would trigger the Solem proportionality analysis. Magee v. State, 966 So. 2d 173, 2007 Miss. App. LEXIS 120 (Miss. Ct. App.), cert. denied, 966 So. 2d 172, 2007 Miss. LEXIS 567 (Miss. 2007).

Defendant's sentence of 20 years in prison, with 10 years to be suspended and five years of post-release probation, for one count of burglary of an occupied dwelling was not grossly disproportionate where he had been involved in other domestic disturbances prior to the one in question; thus, the 20-year sentence was within the statutory guidelines. Edge v. State, 945 So. 2d 1004, 2007 Miss. App. LEXIS 4 (Miss. Ct. App. 2007).

Inmate plea bargained for a sentence of 15 years for burglary of a dwelling, the sentence as ordered was 25 years with 15 years in the custody of the Mississippi Department of Corrections and the remaining 10 years under the post-release provisions with a five-year supervision period; the post-release supervision was to be served concurrent to the inmate's suspended sentence, and thus the inmate's sentence of 15 years to be served on a 25-year sentence was consistent with his plea bargain of 15 years. Craft v. State, 955 So. 2d 384, 2006 Miss. App. LEXIS 813 (Miss. Ct. App. 2006).

Without waiving the procedural bar to the inmate's claim that the inmate's sentence was unconstitutional, the court held that the inmate was properly charged under Miss. Code Ann. § 97-9-45 and entered a plea of guilty to the escape, and the sentence of three years was well within the maximum prescribed by the statute, which referred to prisoners sentenced to the Mississippi Department of Corrections and allowed a maximum sentence of five years, and thus the inmate was not entitled to post-conviction relief; although the inmate was in custody and on a work program for a county at the time of the escape, the inmate was considered under the Department's jurisdiction for purposes of § 97-9-45 because (1) the inmate's original burglary sentence required imprisonment in the "penitentiary" under Miss. Code Ann. § 97-17-23, which term meant any facility under the jurisdiction of the Department pursuant to Miss. Code Ann. § 47-5-3, (2) commitment to any institution within the jurisdiction of the Department was to the Department, not a particular institution pursuant to Miss. Code Ann. § 47-5-110, and (3) under Miss. Code Ann. § 47-5-541, the Department recommended rules concerning the participation of inmates in work programs. Gardner v. State, 848 So. 2d 900, 2003 Miss. App. LEXIS 570 (Miss. Ct. App. 2003).

Sixteen-year sentence for the crime of burglary of a dwelling was not grossly disproportionate. Alston v. State, 841 So. 2d 201, 2003 Miss. App. LEXIS 260 (Miss. Ct. App. 2003).

The defendant was properly sentenced under the statute, notwithstanding that the court mistakenly referred to § 97-17-19, which was repealed and combined into the statute. Lewis v. State, 797 So. 2d 248, 2001 Miss. App. LEXIS 21 (Miss. Ct. App. 2001).

8. Intent.

In a case in which defendant was convicted of burglary of a dwelling, the trial court did not abuse its discretion in admitting defendant's prior felony convictions for burglary into evidence because the evidence of defendant's prior convictions was offered to prove that defendant's intent was to burglarize the house, not to offer aid to someone; given defendant's vigorous assertion of a lack of intent to steal, the admission of the prior burglary convictions was extremely relevant and appropriate in the State's effort to rebut defendant's assertion that he did not intend to burglarize the home; and the evidence of the prior convictions was not overly prejudicial compared to its probative value. Chism v. State, 253 So. 3d 343, 2018 Miss. App. LEXIS 72 (Miss. Ct. App.), cert. denied, 252 So. 3d 595, 2018 Miss. LEXIS 388 (Miss. 2018).

Trial court had before it a factual basis for concluding that defendant entered the victim's home with the intent to commit any one of several crimes inside (theft, robbery, or murder) because, once inside the victim's house, defendant laid in wait, and when the victim entered, defendant robbed and murdered the victim, taking the victim's keys and vehicle. McDonald v. State, 204 So. 3d 780, 2016 Miss. App. LEXIS 583 (Miss. Ct. App.), cert. denied, 205 So. 3d 1085, 2016 Miss. LEXIS 498 (Miss. 2016).

Despite the state's argument that, as underlying offenses to the four capital murder charges, the burglary and child abuse allegations in the indictment were not "separate crimes," the state still had to prove every element of burglary and child abuse beyond a reasonable doubt, including intent, however, petitioner state death row inmate's argument that his defense to the intent element was improperly excluded failed because (1) the jury did find intent in the sentencing phase, after hearing the same evidence; (2) the United States Supreme Court had left to the states the responsibility of defining the elements of crime, including mens rea; and (3) neither diminished capacity nor voluntary intoxication were defenses to crimes in Mississippi. Stevens v. Epps, 2008 U.S. Dist. LEXIS 69564 (S.D. Miss. Sept. 15, 2008), aff'd, 618 F.3d 489, 2010 U.S. App. LEXIS 18696 (5th Cir. Miss. 2010).

9. New trial denied.

There was no abuse of discretion in the trial court's denial of defendant's motion for a new trial after a jury convicted him of burglary of a dwelling because defendant's wife and a hunting camp's caretaker both testified that defendant entered the hunting camp where they were staying, without permission, and assaulted them. Bowman v. State, 283 So. 3d 154, 2019 Miss. LEXIS 359 (Miss. 2019).

Jury acted well within its purview when it rejected defendant's alibi defense, the jury's verdict of guilt was not against the overwhelming weight of the evidence, and the trial court did not abuse its discretion by failing to grant his motion for a new trial. Cavitt v. State, 159 So. 3d 1199, 2015 Miss. App. LEXIS 144 (Miss. Ct. App. 2015).

New trial was not warranted because a conviction for burglary of a dwelling was not against the weight of the evidence where the jury's guilty verdict indicated that it believed the testimony of witnesses and disbelieved defendant; one witness testified he saw defendant fleeing his home on the night of the burglary, and another witness testified that defendant came to his house that same night with a computer and offered to sell it. Smith v. State, 150 So. 3d 122, 2014 Miss. App. LEXIS 611 (Miss. Ct. App. 2014).

Despite contradictory evidence, a motion for a new trial was properly denied in a burglary of a dwelling case because the jury's verdict was not against the overwhelming weight of the evidence and did not result in an unconscionable injustice. The evidence showed that a victim's apartment was entered by force, defendant also entered a bedroom by force, and the victim was punched in the face and suffered injuries inflicted by defendant. Jenkins v. State, 995 So. 2d 839, 2008 Miss. App. LEXIS 677 (Miss. Ct. App. 2008).

10. Guilty plea.

Defendant's best interests guilty plea to burglary of a dwelling had a sufficient factual basis because (1) a prosecutor's statement, the indictment, defendant's statements, and a police report sufficed, and (2) defendant admitted the State showed enough facts for a conviction. Crawford v. State, 287 So. 3d 314, 2019 Miss. App. LEXIS 577 (Miss. Ct. App. 2019).

RESEARCH REFERENCES

ALR.

Sufficiency of showing that burglary was committed at night. 82 A.L.R.2d 643.

What is "building" or "house" within burglary or breaking and entering statute. 68 A.L.R.4th 425.

Minor's entry into home of parent as sufficient to sustain burglary charge. 17 A.L.R.5th 111.

Use of fraud or trick as "constructive breaking" for purpose of burglary or breaking and entering offense. 17 A.L.R.5th 125.

Am. Jur.

13 Am. Jur. 2d, Burglary §§ 1 et seq.

2 Am. Jur. Trials, Investigating Particular Crimes §§ 9-14 (burglary).

3 Am. Jur. Trials, Preparing and Using Photographs in Criminal Cases § 10 (burglary scene).

§ 97-17-25. Burglary; breaking out of dwelling.

Every person who, being in the dwelling house of another, shall commit a crime, and shall break any outer door, or any other part of said house, to get out of the same, shall be guilty of burglary, and be imprisoned in the penitentiary not more than ten years.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 4(12); 1857, ch. 64, art. 46; 1871, § 2523; 1880, § 2739; 1892, § 992; 1906, § 1069; Hemingway's 1917, § 797; 1930, § 813; 1942, § 2039.

JUDICIAL DECISIONS

1. In general.

The word "crime" in the burglary statutes includes misdemeanors as well as felonies. Ashley v. State, 538 So. 2d 1181, 1989 Miss. LEXIS 24 (Miss. 1989).

RESEARCH REFERENCES

ALR.

Burglary: outbuildings or the like as part of "dwelling house." 43 A.L.R.2d 831.

Occupant's absence from residential structure as affecting nature of offense as burglary or breaking and entering. 20 A.L.R.4th 349.

What is "building" or "house" within burglary or breaking and entering statute. 68 A.L.R.4th 425.

Am. Jur.

13 Am. Jur. 2d, Burglary § 12.

2 Am. Jur. Trials, Investigating Particular Crimes §§ 9-14 (burglary).

CJS.

12A C.J.S., Burglary § 9, 10.

§ 97-17-27. Repealed.

Repealed by Laws, 1996, ch. 519, § 4, eff from and after passage (approved April 11, 1996).

§ 97-17-27. [Codes, Hutchinson's 1848, ch. 64, art. 12, Title 4(14); 1857, ch.

64, art. 47; 1871, § 2524; 1880, § 2740; 1892, § 993; 1906, § 1070; Hemingway's 1917, § 798; 1930, § 814; 1942, § 2040]

Editor's Notes — Former § 97-17-27 was entitled: Burglary; breaking inner door of dwelling at night.

§ 97-17-29. Burglary; breaking inner door of dwelling by one lawfully in house.

Every person who, being lawfully in the dwelling house of another, shall break an inner door of the same house, with intent to commit a crime, shall be guilty of burglary, and imprisoned in the penitentiary not more than ten years.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 4(15); 1857, ch. 64, art. 48; 1871, § 2525; 1880, § 2741; 1892, § 994; 1906, § 1071; Hemingway's 1917, § 799; 1930, § 815; 1942, § 2041.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Other burglary statutes.

1. In general.

The word "crime" in the burglary statutes includes misdemeanors as well as felonies. Ashley v. State, 538 So. 2d 1181, 1989 Miss. LEXIS 24 (Miss. 1989).

2. Other burglary statutes.

Where defendant was a frequent guest in the doctor's home and the evidence showed that the suspect broke into a locked basement in the doctor's house and stole $6,000 in currency, defendant was properly indicted for burlgary under Miss. Code Ann. § 97-17-23; a burglary is committed under § 97-17-23 by one who has permission to enter the dwelling, and once inside, breaks and enters, without permission, an interior door with intent to commit some crime and the fact that defendant could have been prosecuted under Miss. Code Ann. § 97-17-29 did not mean that a prosecution under § 97-17-23 was illegal. Sandefer v. State, 952 So. 2d 281, 2007 Miss. App. LEXIS 105 (Miss. Ct. App. 2007).

RESEARCH REFERENCES

ALR.

Maintainability of burglary charge, where entry into building is made with consent. 58 A.L.R.4th 335.

What is "building" or "house" within burglary or breaking and entering statute. 68 A.L.R.4th 425.

Use of fraud or trick as "constructive breaking" for purpose of burglary or breaking and entering offense. 17 A.L.R.5th 125.

Am. Jur.

13 Am. Jur. 2d, Burglary § 19.

CJS.

12A C.J.S., Burglary §§ 7, 9, 10.

§ 97-17-31. Burglary; dwelling house defined.

Every building joined to, immediately connected with, or being part of the dwelling house, shall be deemed the dwelling house.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 4(16); 1857, ch. 64,

art. 49; 1871, § 2526; 1880, § 2742; 1892, § 995; 1906, § 1072; Hemingway's 1917, § 800; 1930, § 816; 1942, § 2042.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Sufficient Evidence.

1. In general.

In a postconviction proceeding following an inmate's conviction for burglary of a dwelling, there was no plain error in the inmate's counsel's failure to raise the issue of whether a vacant house that belonged to a nursing home resident was a "dwelling" because there was an intent to maintain the house for dwelling purposes as shown by the house's listing on the real estate market; thus, the inmate was not denied effective assistance of counsel. Sheffield v. State, 881 So. 2d 249, 2003 Miss. App. LEXIS 998 (Miss. Ct. App. 2003), cert. dismissed, 2005 Miss. LEXIS 87 (Miss. Feb. 3, 2005).

A burglary of a utility shed which was connected to a house by a common roof and ceiling, with a breezeway between the two, was considered a burglary of a dwelling. Edwards v. State, 800 So. 2d 454, 2001 Miss. LEXIS 232 (Miss. 2001).

House remains dwelling for purposes of burglary prosecution notwithstanding lengthy stay of resident of house in nursing home, at least so long as all of resident's personal possessions remain in house and resident intends to return to house when health permits. Course v. State, 469 So. 2d 80, 1985 Miss. LEXIS 2056 (Miss. 1985).

Prosecution for burglarizing dwelling house lies for breaking and entering of week-end home which has been regularly used on alternate weekends for 8 years and in which food, clothing and other necessities have been left. Gillum v. State, 468 So. 2d 856, 1985 Miss. LEXIS 2036 (Miss. 1985).

A prosecution for burglarizing a dwelling house will not lie where the complained of act is the breaking and entering of a motel room; in such a case, defendant should be indicted for breaking and entering a building other than a dwelling house. Robinson v. State, 364 So. 2d 1131, 1978 Miss. LEXIS 2245 (Miss. 1978).

2. Sufficient Evidence.

State proved beyond a reasonable doubt the essential elements of dwelling-house burglary because the side door of the victim's home was closed and secured at the time it was entered and the items stolen, and the home was a "dwelling house" because the victim's testimony showed that she resided in the home three or four nights a week while remodeling it and that she considered it to be her primary house. Burford v. State, — So. 3d —, 2020 Miss. App. LEXIS 484 (Miss. Ct. App. Aug. 25, 2020).

Witness testified that defendant was one of the three individuals who were loading the stolen items into a car at the victim's home and who fled at a high rate of speed when they spotted him; that was direct evidence that defendant was not at his grandfather's home, but rather was actively participating in the burglary. Thus, the fact that defendant was not at his grandfather's house would have been admitted through the witness's testimony, regardless of an alleged accomplice's inconsistent statement. Therefore, even without the accomplice's statement, the evidence was sufficient to support the jury verdict finding defendant guilty of burglary. Long v. State, 934 So. 2d 313, 2006 Miss. App. LEXIS 192 (Miss. Ct. App.), cert. dismissed, 939 So. 2d 805, 2006 Miss. LEXIS 610 (Miss. 2006).

RESEARCH REFERENCES

ALR.

What is "building" or "house" within burglary or breaking and entering statute. 68 A.L.R.4th 425.

Burglary, breaking, or entering of motor vehicle. 72 A.L.R.4th 710.

Minor's entry into home of parent as sufficient to sustain burglary charge. 17 A.L.R.5th 111.

Am. Jur.

13 Am. Jur. 2d, Burglary §§ 3-5.

CJS.

12A C.J.S., Burglary §§ 17 et seq.

§ 97-17-33. Burglary; breaking and entering building other than dwelling; railroad car; vessels; automobiles.

(1) Every person who shall be convicted of breaking and entering, in the day or night, any shop, store, booth, tent, warehouse, or other building or private room or office therein, water vessel, commercial or pleasure craft, ship, steamboat, flatboat, railroad car, automobile, truck or trailer in which any goods, merchandise, equipment or valuable thing shall be kept for use, sale, deposit, or transportation, with intent to steal therein, or to commit any felony, or who shall be convicted of breaking and entering in the day or night time, any building within the curtilage of a dwelling house, not joined to, immediately connected with or forming a part thereof, shall be guilty of burglary, and imprisoned in the penitentiary not more than seven (7) years.

(2) Any person who shall be convicted of breaking and entering a church, synagogue, temple or other established place of worship with intent to commit some crime therein shall be punished by imprisonment in the penitentiary not more than fourteen (14) years.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 4(17); 1857, ch. 64, art. 50; 1871, § 2527; 1880, § 2743; 1892, § 996; 1906, § 1073; Hemingway's 1917, § 801; 1930, § 817; 1942, § 2043; Laws, 1940, ch. 243; Laws, 1960, ch. 241; Laws, 1989, ch. 347, § 1; Laws, 1997, ch. 473, § 4, eff from and after passage (approved March 27, 1997).

Cross References — Crime of looting, see § 97-17-65.

Enhancement of offenses listed in 99-19-401(2) if the instrumentality used in the commission of the 99-19-401(2) offense was initially obtained in the course of the commission of the crime(s) provided for in this section, see § 99-19-401.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Indictment.
3. —Joinder of offenses.
4. —Allegations as to ownership.
5. —Variance between indictment and proof.
6. Evidence, generally.
7. —Of breaking and entering.
8. —Of intent.
9. —Of value.
10. —Of fingerprints.
11. —Of possession or disposition of stolen property.
12. —Of opportunity.
13. —Of prior convictions or other crimes.
14. —Confessions.
15. Questions for jury.
16. Instructions.
17. Conviction.
18. Miscellaneous.

1. In general.

Fact that Miss. Code Ann. § 97-17-33(2) and Miss. Code Ann. § 97-17-43(2) provide harsher penalties for crimes committed in places of worship does not amount to government endorsement of religion; therefore, they do not violate the Establishment Clause. Dimaio v. State, 951 So. 2d 581, 2006 Miss. App. LEXIS 782 (Miss. Ct. App. 2006).

A Goodwill Industries box in the parking lot of a shopping mall was a structure encompassed under this section. Goldman v. State, 741 So. 2d 949, 1999 Miss. App. LEXIS 339 (Miss. Ct. App. 1999).

Evidence is sufficient to support verdict of guilty on charge of burglary where defendant confessed to crime after having been read his Miranda rights and having signed written waiver of those rights. Turbo Trucking Co. v. Rollins, 511 So. 2d 148, 1987 Miss. LEXIS 2721 (Miss. 1987).

Voluntary intoxication is not defense to burglary charge. Cummings v. State, 465 So. 2d 993, 1985 Miss. LEXIS 1847 (Miss. 1985).

A prosecution for burglarizing a dwelling house will not lie where the complained of act is the breaking and entering of a motel room; in such a case, defendant should be indicted for breaking and entering a building other than a dwelling house. Robinson v. State, 364 So. 2d 1131, 1978 Miss. LEXIS 2245 (Miss. 1978).

Under the statute defining burglary as the breaking and entering of a building with the intent to steal or commit a felony, any act of force necessary to enter, however slight, constitutes a "breaking". Branning v. State, 222 So. 2d 667, 1969 Miss. LEXIS 1539 (Miss. 1969).

Burglary of a store building is a felony. McCollum v. State, 197 So. 2d 252, 1967 Miss. LEXIS 1523 (Miss. 1967).

A building in process of construction and nearing completion, although designed and intended for occupancy as a dwelling house when completed, but which at the time of the burglary had not yet been occupied, was not a dwelling house in contemplation of Code 1942, §§ 2036 and 2038, and the offense could be properly charged only under Code 1942, § 2043. Watson v. State, 254 Miss. 82, 179 So. 2d 826, 1965 Miss. LEXIS 928 (Miss. 1965).

The crime of burglary consists of two elements, (1) the burglarious breaking and entering of the house or building, and (2) the felonious intent to commit a felony therein. Faust v. State, 221 Miss. 668, 74 So. 2d 817, 1954 Miss. LEXIS 576 (Miss. 1954).

The crime of burglary consists of two essentials elements, the burglarious breaking and entering the house and the felonious intent to commit some crime therein and it is the criminal breaking without the consent of the owner, for the purpose of taking property stored in a building that constituted the corpus delicti of burglary. Holderfield v. State, 215 Miss. 564, 61 So. 2d 385, 1952 Miss. LEXIS 599 (Miss. 1952).

Except in cases of constructive breaking where an entry is effected by fraud or intimidation, there can be no breaking, and therefore there is no burglary where the occupant of the house, or an agent or servant having authority, expressly or impliedly invites or consents to the entry, and the fact that one who enters with the consent of the owner commits a larceny after the entry does not make him guilty of burglary. Holderfield v. State, 215 Miss. 564, 61 So. 2d 385, 1952 Miss. LEXIS 599 (Miss. 1952).

Under this section [Code 1942, § 2043] a breaking and entering is necessary to constitute the crime of burglary. Clanton v. State, 211 Miss. 568, 52 So. 2d 349, 1951 Miss. LEXIS 388 (Miss. 1951).

The essentials to prove the crime of burglary are a breaking and entering the building, and showing that it was done with intent to steal therein or to commit a felony. Gross v. State, 191 Miss. 383, 2 So. 2d 818, 1941 Miss. LEXIS 157 (Miss. 1941).

By "breaking" is meant any act of force, regardless of how slight, necessary to be used in entering the building-the turning of a knob, a slight push to further open a door, the raising of a latch, or like act, being sufficient. Gross v. State, 191 Miss. 383, 2 So. 2d 818, 1941 Miss. LEXIS 157 (Miss. 1941).

Transaction between employees of owner of premises burglarized and third person did not amount to consent to commission of the crime. Gentry v. State, 102 Miss. 630, 59 So. 853, 1912 Miss. LEXIS 100 (Miss. 1912).

One who is let into a building by a decoy or detective in the service of an acting for the owner is not guilty of burglary. Strait v. State, 77 Miss. 693, 27 So. 617, 1900 Miss. LEXIS 17 (Miss. 1900).

2. Indictment.

Indictment was not defective because it directed petitioner to the statute; the indictment fully notified petitioner of the nature and cause of the accusation against him and did not prejudice him in his defense. Forkner v. State, 277 So. 3d 946, 2019 Miss. LEXIS 19 (Miss. 2019).

In a case involving burglary of a nondwelling, an indictment failed to allege all of the essential elements of the crime; only the first element of the crime was cited in the indictment because there was no mention of any valuables kept in the house or a citation to the particular crime that defendant allegedly intended to commit. Therefore, the indictment was void as violative of the federal and state constitutional provisions relating to the right to notice of criminal charges. Gales v. State, 131 So. 3d 1238, 2013 Miss. App. LEXIS 804 (Miss. Ct. App. 2013).

Where the original indictment identified the inmate by name and stated that he unlawfully, wilfully, feloniously, and burglariously broke into and entered a storage shed, the indictment was not defective as it tracked the language of Miss. Code Ann. § 97-17-33, and a subsequent amendment to change a section number did not require the indictment to be returned to the grand jury. Ford v. State, 911 So. 2d 1007, 2005 Miss. App. LEXIS 671 (Miss. Ct. App. 2005).

Language of the indictment explicitly mirrored the burglary statute of Miss. Code Ann. § 97-17-33, as it stated that defendant did willfully, unlawfully and feloniously break and enter a trailer having the intent to commit an assault therein and burglarize it; the language "intent to commit assault" was held to be valid in an indictment to depict the predicate crime for burglary, and it was not necessary for the State to supply the elements of assault, as it was used as the underlying intent crime of burglary. Lancaster v. State, 878 So. 2d 140, 2004 Miss. App. LEXIS 27 (Miss. Ct. App.), cert. denied, 878 So. 2d 67, 2004 Miss. LEXIS 916 (Miss. 2004), cert. denied, 543 U.S. 1191, 125 S. Ct. 1406, 161 L. Ed. 2d 196, 2005 U.S. LEXIS 2140 (U.S. 2005).

An indictment for burglary was adequate where it was inartfully drawn but contained all of the required words. Harrison v. State, 722 So. 2d 681, 1998 Miss. LEXIS 553 (Miss. 1998).

It is not necessary under the burglary statute to allege in the indictment the value of the property stolen. Faust v. State, 221 Miss. 668, 74 So. 2d 817, 1954 Miss. LEXIS 576 (Miss. 1954).

Where an indictment charging burglary by stealing of automobile from motor company stated that the accused kept the automobile for use, transportation, deposit, sale and delivery, this did not impose upon the state the burden of proving all five purposes for which the automobile was kept. Strickland v. State, 220 Miss. 71, 70 So. 2d 1, 1954 Miss. LEXIS 410 (Miss. 1954).

Where an indictment for burglary of store building failed to allege an intent to steal, it was fatally defective requiring reversal of conviction. Taylor v. State, 214 Miss. 263, 58 So. 2d 664, 1952 Miss. LEXIS 466 (Miss. 1952).

Where an indictment for burglary of a store building omitted an allegation of intent to steal, the defendant's failure to demur to the indictment did not constitute waiver of his right to raise the question on his motion for a new trial and on appeal since the intent to steal was an essential element of the crime. Taylor v. State, 214 Miss. 263, 58 So. 2d 664, 1952 Miss. LEXIS 466 (Miss. 1952).

This section [Code 1942, § 2043] does not require the indictment to state the value of the personal property intended to be stolen. Lewis v. State, 212 Miss. 775, 55 So. 2d 475, 1951 Miss. LEXIS 509 (Miss. 1951).

Indictment charging breaking and entering a high school building, "the property of Prentiss Consolidated School District," should also have charged that the building in question was the property of the school trustees (naming them) and their successors in office, for the use and benefit of the Prentiss Consolidated School District. Brown v. State, 209 Miss. 636, 48 So. 2d 131, 1950 Miss. LEXIS 425 (Miss. 1950).

Indictment for burglary under this section [Code 1942, § 2043] is not demurrable on ground that it does not allege what kind of money was taken, whether greenback bills, silver dollars, or good and lawful money of the United States of America. Bone v. State, 207 Miss. 868, 43 So. 2d 571, 1949 Miss. LEXIS 398 (Miss. 1949).

Indictment charging that named defendant did wilfully, feloniously and burglariously break and enter storehouse of lumber company, in which goods, merchandise and other things of value were kept, the property of said lumber company, with intent of named defendant then and there to take, steal and carry away sum of $10 in money, or value of $10 in money, the property of said lumber company, found and kept for use and sale in said storehouse, charges crime of burglary and demurrer attacking it is properly overruled. Bone v. State, 207 Miss. 868, 43 So. 2d 571, 1949 Miss. LEXIS 398 (Miss. 1949).

Indictment charging accused with feloniously and burglariously entering store and stealing and carrying away certain property "wilfully and feloniously" held not defective as failing to charge felonious intent in commission of the larceny. Colburn v. State, 175 Miss. 704, 166 So. 920, 1936 Miss. LEXIS 45 (Miss. 1936).

Indictment charging burglary held not defective because it did not charge whether crime was committed in day or nighttime. Colburn v. State, 175 Miss. 704, 166 So. 920, 1936 Miss. LEXIS 45 (Miss. 1936).

Indictment containing name of county in caption and charging that offense was committed in "said county and State" held to sufficiently charge that cotton house was situated in county. Yates v. State, 172 Miss. 581, 161 So. 147, 1935 Miss. LEXIS 179 (Miss. 1935).

Indictment charging that defendant "did wilfully, unlawfully, feloniously and with force and arms burglariously break and enter" held sufficient as against contention that there was no verb charging action with reference to burglary. Yates v. State, 172 Miss. 581, 161 So. 147, 1935 Miss. LEXIS 179 (Miss. 1935).

Indictment charging accused entered building with intent to take, steal, and carry away certain property found therein, charges burglary and will not support conviction for larceny. Fournier v. State, 96 Miss. 417, 50 So. 502, 1909 Miss. LEXIS 27 (Miss. 1909).

An indictment under the statute is not bad because it does not pursue literally the language of the statute if the words used be synonymous with those in the statute. Roberts v. State, 55 Miss. 421, 1877 Miss. LEXIS 152 (Miss. 1877).

3. —Joinder of offenses.

Where an indictment for burglary charged larceny not as a substantive offense but as demonstrative of burglarious intent, it was erroneous upon conviction to impose a separate sentence for larceny, and the sentence for larceny would be deleted as surplusage, without affecting the sentence for burglary. Bullock v. State, 222 So. 2d 692, 1969 Miss. LEXIS 1552 (Miss. 1969).

Burglary and larceny may be charged in the same count of an indictment. Brown v. State, 103 Miss. 664, 60 So. 727, 1912 Miss. LEXIS 214 (Miss. 1912).

Assault and battery committed in the house may be so joined with burglary. Smith v. State, 57 Miss. 822, 1880 Miss. LEXIS 68 (Miss. 1880).

It is a general rule that two crimes cannot be charged in the same count of an indictment; but as an exception, larceny and burglary may be joined in a single count, and in such case the jury may acquit of burglary and convict of larceny; but if they return a general verdict of guilty, it will be regarded as a conviction of burglary alone. Roberts v. State, 55 Miss. 421, 1877 Miss. LEXIS 152 (Miss. 1877); Harris v. State, 61 Miss. 304, 1883 Miss. LEXIS 125 (Miss. 1883).

4. —Allegations as to ownership.

In an indictment for burglary the allegations as to ownership of the title to the building constitute surplusage, and, insofar as the burglary is concerned, the occupant of the building at the time of the burglary is the owner, and no such particularization of the description of the title of the building is required. Taylor v. State, 214 Miss. 263, 58 So. 2d 664, 1952 Miss. LEXIS 466 (Miss. 1952).

Indictment charging ownership of building burglarized in a partnership insufficient unless names of several partners set forth. Wright v. State, 130 Miss. 603, 94 So. 716, 1922 Miss. LEXIS 231 (Miss. 1922).

Indictment charging defendant burglarized railroad car held insufficient for not alleging ownership of the car. State v. Ellis, 102 Miss. 541, 59 So. 841, 1912 Miss. LEXIS 84 (Miss. 1912).

It is necessary to allege the ownership of the building burglarized and to prove it as laid. James v. State, 77 Miss. 370, 26 So. 929, 1899 Miss. LEXIS 59 (Miss. 1899).

When a corporation is alleged to be the owner there must be proof of the existence of the corporation. Proof, however, that it is known and acting as a corporation is sufficient. James v. State, 77 Miss. 370, 26 So. 929, 1899 Miss. LEXIS 59 (Miss. 1899).

5. —Variance between indictment and proof.

In a business burglary case, the indictment, despite misspelling the name of the store where the burglary took place, was sufficient. Cridiso v. State, 956 So. 2d 281, 2006 Miss. App. LEXIS 745 (Miss. Ct. App. 2006), cert. denied, 957 So. 2d 1004, 2007 Miss. LEXIS 285 (Miss. 2007).

The fact that the indictment charges an intent in the burglar to steal the property of one person and the proof shows the actual stealing of the property of another is immaterial, "if the conviction be of burglary." Harris v. State, 61 Miss. 304, 1883 Miss. LEXIS 125 (Miss. 1883).

6. Evidence, generally.

Evidence was sufficient to convict defendant of burglary of an automobile because neither the statutory law nor case law identified the legal description of a subject vehicle as an essential element of the offense; and a sufficient inference of burglary supported defendant's conviction as the victim discovered defendant in possession of some of her stolen property only hours after she reported the auto burglary; defendant was attempting to enter the victim's apartment even though he neither lived there nor knew the victim; and, at the time he tried to enter the victim's apartment, defendant had in his possession both the victim's expired license and a bag stolen from her vehicle. Esters v. State, 281 So. 3d 844, 2019 Miss. App. LEXIS 8 (Miss. Ct. App.), cert. denied, — So. 3d —, 2019 Miss. LEXIS 309 (Miss. 2019).

Circuit court properly denied defendant's post-trial motion for judgment notwithstanding the verdict because the evidence presented by the State was sufficient to support the jury's verdict, and the jury's verdict was not against the overwhelming weight of the evidence; eyewitness testimonies of the victim and his fiancee placed defendant at the scene and provided jurors with a detailed description of a tousled truck cab and its missing content. Fontenot v. State, 287 So. 3d 322, 2019 Miss. App. LEXIS 582 (Miss. Ct. App. 2019).

In a case in which defendant was convicted of burglary of a building other than a dwelling, the verdict was not against the overwhelming weight of the evidence because the testimony showed defendant popped the lock to the victim's shed using bolt cutters, opened the door to the shed, picked up the measuring wheel that had fallen out of the shed, and put the measuring wheel in his truck; the measuring wheel and the damaged lock, both of which were owned by the victim, were found in defendant's truck; and, although an accomplice testified that he and defendant were simply helping another person, and had permission from the other person to take the measuring wheel from the shed, the jury rejected that testimony. Stubbs v. State, 220 So. 3d 1014, 2017 Miss. App. LEXIS 291 (Miss. Ct. App. 2017).

New trial was not warranted in an auto burglary case under this statute because, despite testimony that defendant was at home when a crime was committed, defendant was identified as a perpetrator in the crime by a witness, and he confessed to his involvement. The jury acted as the sole judge of the credibility of the witnesses. Caston v. State, 148 So. 3d 680, 2014 Miss. App. LEXIS 565 (Miss. Ct. App. 2014).

Evidence was sufficient to convict defendant of burglary and the jury's verdict was not contrary to the overwhelming weight of the evidence because the jury could find that defendant unsuccessfully tried to pry open the back door to the tire shop as a detective testified that someone had unsuccessfully attempted to pry open the back door to the shop, and the owner of the tire shop testified that when he first encountered defendant the next morning, defendant was near a crowbar that had paint chips on it that matched the paint from the back door to the shop; and the jury could find that defendant then pried off the wood that covered a small opening to the shop and crawled through the hole into the shop. Ramer v. State, 156 So. 3d 919, 2014 Miss. App. LEXIS 487 (Miss. Ct. App. 2014), cert. denied, 157 So. 3d 835, 2015 Miss. LEXIS 77 (Miss. 2015).

Trial court did not err in denying defendant's motions for a directed verdict and a judgment notwithstanding the verdict for the offense of burglary of a business because the jury was presented with video surveillance depicting a man carrying the stolen bottles to the trunk of his vehicle using what appeared to be a bedspread or sheet; defendant's girlfriend described how defendant took the bedspread off the hotel bed and went outside of the hotel room, and then the following day, she observed many unopened bottles of alcohol in the trunk of his car; and an officer testified that defendant's vehicle matched the vehicle seen in the surveillance video. Stewart v. State, 130 So. 3d 1158, 2013 Miss. App. LEXIS 600 (Miss. Ct. App. 2013).

Evidence supported defendant's multiple convictions of automobile burglary because footage of a surveillance video showed his truck parked next to or near the victims' vehicles and defendant illegally entering those vehicles and the victims described the damage to their vehicles and the items taken from their vehicles. Additionally, a security officer observed a vehicle pull into a parking lot, defendant exit the vehicle, and look in the windows of other vehicles, one of which was burglarized. Bunch v. State, 123 So. 3d 484, 2013 Miss. App. LEXIS 602 (Miss. Ct. App. 2013).

In addition to a witness's testimony that she saw defendant on a surveillance video, defendant's conviction for business burglary, pursuant to Miss. Code Ann. § 97-17-33(1), was supported by testimony from the police officers who found stolen stocking caps in defendant's pocket, as well as testimony from two eyewitnesses who identified defendant once he was apprehended. Smith v. State, 28 So. 3d 678, 2010 Miss. App. LEXIS 64 (Miss. Ct. App. 2010).

Evidence was sufficient to support defendant's conviction of burglary of a building, given that (1) the jury was entitled to believe whomever's story it found most credible, (2) a witness testified that he and defendant agreed that the witness would steal a public address (PA) system for defendant in return for other goods, (3) defendant drove the witness to the office where the burglary occurred and they later returned to defendant's house with the stolen goods, (4) the PA was eventually recovered from defendant's mother's house, and (5) the witness's version of events was consistent with the testimony of a deputy; the court could not find that allowing defendant's conviction to stand sanctioned an unconscionable injustice. Thompson v. State, 995 So. 2d 831, 2008 Miss. App. LEXIS 522 (Miss. Ct. App. 2008).

Evidence was sufficient to sustain a burglary conviction where defendant was seen near the burglarized business beforehand, the keys to the stolen truck were missing from the business, defendant was in possession of the stolen truck's keys, his explanation for his possession of the stolen truck, that it was his uncle's truck, was demonstrably false as the vehicle identification number clearly showed that the truck belonged to the burglarized business, and the inference to be drawn from defendant's possession of the stolen truck was strong where he was found in possession of the truck only six days after the burglary occurred, the license plate had been replaced by a stolen, out-of-state, license plate, he gave several aliases when confronted by the police, and his explanation for possessing the truck was demonstrably false. Presley v. State, 994 So. 2d 191, 2008 Miss. App. LEXIS 164 (Miss. Ct. App.), cert. denied, 998 So. 2d 1010, 2008 Miss. LEXIS 652 (Miss. 2008).

Defendant's motions for a directed verdict and judgment notwithstanding the verdict were denied in a case alleging the burglary of a storehouse because the evidence was sufficient for the conviction;

police identified defendant through his mannerisms, even though a towel was covering his face, clothes similar to the ones worn were found at the residence of defendant's girlfriend, a similar towel was found, and a large amount of cash was discovered. Jackson v. State, 943 So. 2d 746, 2006 Miss. App. LEXIS 892 (Miss. Ct. App. 2006).

Evidence was sufficient to sustain a conviction for business burglary because defendant was found in the proximity of the store shortly after the burglary was discovered, over 90 cartons of cigarettes were found in defendant's vehicle, and the cartons matched nearly exactly the inventory taken from the store. Cridiso v. State, 956 So. 2d 281, 2006 Miss. App. LEXIS 745 (Miss. Ct. App. 2006), cert. denied, 957 So. 2d 1004, 2007 Miss. LEXIS 285 (Miss. 2007).

Where defendant was convicted of burglary of a building, the trial court had not erred in admitting certain photographs into evidence because the documents provided by the State during discovery effectively put defendant on notice of the existence of the photographs. Similarly, according to the prosecution's undisputed recollection of events, defendant was given an opportunity to view the photographs on the morning of trial. Powell v. State, 925 So. 2d 878, 2005 Miss. App. LEXIS 731 (Miss. Ct. App. 2005), cert. denied, 927 So. 2d 750, 2006 Miss. LEXIS 183 (Miss. 2006).

Defendant was properly convicted under Miss. Code Ann. § 97-17-33(1) where the jury could conclude that defendant broke the lock on the owner's storage shed, entered without her permission, and stole her furniture; the jury could believe the State's evidence that defendant was in possession of stolen goods, in close proximity to the house, just after the burglary occurred. Bowie v. State, 921 So. 2d 378, 2005 Miss. App. LEXIS 587 (Miss. Ct. App. 2005), cert. denied, 926 So. 2d 922, 2006 Miss. LEXIS 158 (Miss. 2006).

Witness testified that she saw defendant pull over to the side of the road outside the victim's hunting camp, retrieve an air conditioner from the ditch, and place the air conditioner into the trunk of the car; through that testimony, an inference was made by the jury that defendant had previously removed the air conditioner and placed it by the road for later retrieval. Thus, the evidence was sufficient to prove that defendant committed a break-in and his conviction on count I for burglary of a storehouse was appropriate. Forkner v. State, 902 So. 2d 615, 2004 Miss. App. LEXIS 1105 (Miss. Ct. App. 2004), cert. denied, 901 So. 2d 1273, 2005 Miss. LEXIS 345 (Miss. 2005).

Reasonable inferences from the State's evidence established that defendant and his accomplice had broken the glass door of the store, entered the store, stolen the merchandise, placed it in the back of the truck, driven away, and were making their getaway when they were fortuitously stopped for driving with a burned-out headlight. Thus, a logical inference could be made from the evidence for the jury to find that defendant had committed a breaking and entering of a store with the intent to steal, sufficient to find defendant guilty of the crime of burglary of a business. Mann v. State, 892 So. 2d 267, 2004 Miss. App. LEXIS 921 (Miss. Ct. App. 2004), cert. denied, 892 So. 2d 824, 2005 Miss. LEXIS 69 (Miss. 2005).

Evidence presented to the jury included the statement that defendant did enter the school illegally and assist others in entering the school, and it also included the testimony of a witness who was with defendant inside the school; the witness's testimony and the statement placing defendant inside the school were sufficient evidence presented to the jury for it to reasonably find defendant guilty, and defendant failed to prove that no rational jury could find him guilty on the evidence presented. Hunter v. State, 878 So. 2d 1066, 2004 Miss. App. LEXIS 968 (Miss. Ct. App. 2004).

Evidence was sufficient to convict defendant of burglary because (1) all the elements of burglary, including breaking and entering and evidence from which the jury could find the necessary intent to commit a crime once inside the business, were shown by credible evidence to have occurred; (2) defendant's blood matched the samples taken from the store where the break-in occurred and the ATM machine was stolen; and (3) the only evidence weighing against that persuasive proof was defendant's own self-serving statement that he was attacked by individuals wielding broken bottles that was not corroborated by any unbiased witness or objective demonstrative evidence. Lee v. State, 869 So. 2d 1063, 2004 Miss. App. LEXIS 249 (Miss. Ct. App. 2004).

Where an officer investigating the report of a car break-in at a car lot saw defendant at the lot at 4:30 a.m., defendant fled when he approached, and a manager of the lot testified that the auto part found in defendant's pocket came from one of the cars on the lot, the evidence, despite some inconsistencies, had been sufficient to convict defendant of burglary, and his motion to set aside the jury's verdict was properly denied. Fields v. State, 879 So. 2d 481, 2004 Miss. App. LEXIS 118 (Miss. Ct. App.), cert. denied, 882 So. 2d 234, 2004 Miss. LEXIS 992 (Miss. 2004).

Evidence was sufficient to convict defendant where defendant's arrest was lawful, based upon witness information and officer corroboration, and the jury could believe the State's testimony that defendant intended to commit a crime by breaking into the vehicles, even though defendant claimed that he was looking for a phone. Jackson v. State, 845 So. 2d 727, 2003 Miss. App. LEXIS 438 (Miss. Ct. App. 2003).

Where defendant was arrested near the scene of a vehicle burglary, the theft was reported soon after defendant's arrest, defendant did not conceal the stolen items when confronted by police, and defendant had no explanation for being in possession of the stereo equipment, there was sufficient evidence presented to support a conviction for automobile burglary. Cheeks v. State, 843 So. 2d 87, 2003 Miss. App. LEXIS 138 (Miss. Ct. App. 2003).

In defendant's burglary trial, the employee's identification of defendant at a later lineup was not 100 percent positive, although the employee concluded that defendant matched the suspect, and police later stopped defendant in the same area, where several burglaries had occurred, and found several speakers in defendant's car that generally matched the stolen speakers; thus, the evidence was sufficient to support the jury's verdict, and defendant's motion for a new trial was properly denied. Coleman v. State, 841 So. 2d 1170, 2003 Miss. App. LEXIS 186 (Miss. Ct. App. 2003).

Evidence was sufficient to support a conviction for auto burglary where (1) a police officer testified that he saw the defendant enter a truck in the early morning hours, (2) the defendant's coperpetrator testified that both he and the defendant entered the truck with the intent to steal a stereo system, and (3) the owner of the truck testified that he did not know the defendant and did not give him permission to enter the truck. Hall v. State, 760 So. 2d 817, 2000 Miss. App. LEXIS 202 (Miss. Ct. App. 2000).

Evidence was sufficient to support a conviction, notwithstanding the defendant's denial of any involvement in the burglary at issue, where (1) the two coperpetrators implicated the defendant in the burglary, (2) a neighbor saw three people in the burglarized store, and (3) recently stolen items from the store were found at the apartment of the defendant. James v. State, 756 So. 2d 850, 2000 Miss. App. LEXIS 47 (Miss. Ct. App. 2000).

Evidence was sufficient to support a conviction for burglary of a building other than a dwelling where (1) the defendant drove himself and his coperpetrator to the rear of a store, (2) the coperpetrator began to break into the store while the defendant acted as a look-out, and (3) the defendant fled when the police arrived. Henderson v. State, 756 So. 2d 811, 2000 Miss. App. LEXIS 16 (Miss. Ct. App. 2000).

Evidence was sufficient to support a conviction for burglary of a building other than a dwelling where (1) the activities seen and heard by an off-duty officer were the efforts necessary to push an air conditioner out of an opening onto the floor inside the building and (2) the defendant then took advantage of that opening to begin an entry into the premises for the purpose of committing a theft once inside; the fact that the defendant did not entirely succeed in his effort to enter the building was not helpful to his case as the slightest physical entry into the previously secure enclosure was sufficient to satisfy the entering component of burglary. Henderson v. State, 756 So. 2d 811, 2000 Miss. App. LEXIS 16 (Miss. Ct. App. 2000).

Evidence was sufficient to support a conviction for burglary where (1) a stolen safe and its contents were found in the defendant's bedroom five days after a restaurant was broken into, (2) having performed renovations at the restaurant, the defendant testified that he knew where the safe was located in the restaurant, (3) the defendant called inquiring about additional work at the restaurant shortly before the burglary occurred, and (4) a witness testified that she saw the defendant carrying a heavy box-shaped item into his bedroom late one night. Smith v. State, 749 So. 2d 1179, 1999 Miss. App. LEXIS 531 (Miss. Ct. App. 1999).

Evidence was sufficient to support conviction for burglary of an automobile. Ward v. State, 726 So. 2d 223, 1998 Miss. App. LEXIS 1111 (Miss. Ct. App. 1998).

Evidence was sufficient to support a conviction for auto burglary where (1) the defendant's palm print was found on the victim's van near the place where entry was made, and (2) there was also forensic testimony and time proximity of relevant events which connected the defendant to the crime. Rice v. State, 723 So. 2d 1239, 1998 Miss. App. LEXIS 961 (Miss. Ct. App. 1998).

Mere support for the State's hypothesis in a case based entirely on circumstantial evidence is not enough, because the evidence must be of such quality as to rise to the level of excluding every reasonable hypothesis other than that of guilt. Murphy v. State, 566 So. 2d 1201, 1990 Miss. LEXIS 443 (Miss. 1990).

Officer who arrests burglary suspect may testify at trial that suspect was arrested pursuant to outstanding arrest warrant, where no mention is made of charges upon which warrant is based. Brown v. State, 483 So. 2d 328, 1986 Miss. LEXIS 2372 (Miss. 1986).

It is reversible error to take up major portion of burglary trial in introducing evidence of no relevance whatever to guilt of defendant. Weaver v. State, 481 So. 2d 832, 1985 Miss. LEXIS 2318 (Miss. 1985).

Denying accused on redirect examination opportunity to explain what he meant in note to prisoner arrested with him during burglarizing of bar, was not error where any prejudicial effect which may have resulted was removed by testimony of accused at other times during trial which explained purpose of note in detail. Standard Oil Co. v. Westmoreland, 291 So. 2d 744, 1974 Miss. LEXIS 1751 (Miss. 1974).

There was no error in permitting narcotics officer to testify about putting a transmitting "bug", or device on the person of the state witness and listening to conversation between the witness and defendant, notwithstanding contention that no evidence was offered to show that state witness consented to "bugging" or scheme to hear conversation, and the further argument that no recording was made of conversation and, in any case, it was not a confession. Moore v. State, 291 So. 2d 187, 1974 Miss. LEXIS 1724 (Miss. 1974).

Under the decisions of this State, it is well settled that testimony of an accomplice, although entirely without corroboration, will support a verdict of conviction. Moore v. State, 291 So. 2d 187, 1974 Miss. LEXIS 1724 (Miss. 1974).

Where a sheriff took a bottle of wine in lawful custody pending the outcome of a trial on the charge of unlawful possession of the liquor and this bottle was subject of larceny by the defendant, a showing that the defendant broke into courthouse with intent to remove the bottle would be sufficient for conviction of burglary. Faust v. State, 221 Miss. 668, 74 So. 2d 817, 1954 Miss. LEXIS 576 (Miss. 1954).

Where seed stolen was mixed with other seed, state was not required to prove how much was stolen at particular theft, since value of seed was not material. Yates v. State, 172 Miss. 581, 161 So. 147, 1935 Miss. LEXIS 179 (Miss. 1935).

Testimony of person who early in the morning following the theft bought the seed as to statements made showing that accused had assisted in breaking into house and taking away the seed held admissible. Yates v. State, 172 Miss. 581, 161 So. 147, 1935 Miss. LEXIS 179 (Miss. 1935).

Evidence held sufficient to sustain conviction. Stokes v. State, 138 Miss. 701, 103 So. 365, 1925 Miss. LEXIS 80 (Miss. 1925).

7. —Of breaking and entering.

Evidence was insufficient to convict defendant of burglary of a building because the State failed to prove beyond a reasonable doubt that a breaking occurred as, despite the owner's testimony that he had visited the house the day before the incident, he did not testify as to whether he checked to ensure the windows and doors to the house were locked or even shut; the video introduced by the State did not show the alleged burglar entering or exiting through a closed door or window; and the State did not offer any photographs of the home's windows or doors to show proof of breaking. Dean v. State, 295 So. 3d 575, 2020 Miss. App. LEXIS 151 (Miss. Ct. App. 2020).

Trial court erred in denying defendant's motion for a judgment notwithstanding the verdict because the evidence was insufficient to support a conviction for burglary of a business as the State did not show that defendant broke into the dwelling because the only photograph of the door, which was taken prior to the date charged in the indictment, showed the solid door open and the storm door closed, but defendant claimed he entered the dwelling through an open door; there was no proof the storm door was even there on the date of the incident as it could have been removed, or it could have been open; and the State did not prove that defendant actually opened either the storm door or the solid door in order to satisfy the element of breaking. Foster v. State, 281 So. 3d 229, 2019 Miss. App. LEXIS 113 (Miss. Ct. App. 2019).

Circuit court properly denied defendant's post-trial motion for judgment notwithstanding the verdict because the evidence was sufficient to support the jury's verdict that defendant was guilty of burglary of an automobile; the evidence was sufficient to support the jury's finding that the State proved the "breaking" element because the victim testified that he witnessed defendant in his truck without permission, and photographs of the truck and the open windows were published to the jury. Fontenot v. State, 287 So. 3d 322, 2019 Miss. App. LEXIS 582 (Miss. Ct. App. 2019).

Evidence supported defendant's conviction for burglary of an automobile because a witness testified that the witness saw defendant in a parked vehicle that the witness knew belonged to someone else with one of the car's doors open, that defendant walked away, that the witness called the police while the witness followed defendant, and that the witness saw officers arrest defendant. In addition the owner of the vehicle testified that the vehicle was locked, and the police found personal items belonging to the owners in defendant's possession. Naylor v. State, 248 So. 3d 793, 2018 Miss. LEXIS 156 (Miss. 2018).

Reasonable, fair-minded jurors could have found defendant and codefendant guilty of burglary of a building other than a dwelling in violation of Miss. Code Ann. § 97-17-33(1) because the State showed that they were on the victim's property without his permission; defendant admitted that he had hidden some of the items he had taken from the victim's property, and an investigator with the county sheriff's department, who had interviewed defendant and codefendant, testified that a photograph showed what appeared to be defendant opening the door to the back porch of the victim's with his right sleeve enclosing his hand and opined that defendant was trying not to leave fingerprints. Brown v. State, 48 So. 3d 614, 2010 Miss. App. LEXIS 582 (Miss. Ct. App. 2010), overruled, Ladd v. State, 87 So. 3d 1108, 2012 Miss. App. LEXIS 239 (Miss. Ct. App. 2012).

Appellate court reversed defendant's conviction for burglary in violation of Miss. Code Ann. § 97-17-33 as the building that defendant entered was an open, three-sided shed such that there was no actual breaking, an essential element of burglary, and there was no evidence of constructive breaking because defendant did not use deceit to gain access to the shed. Hill v. State, 929 So. 2d 338, 2005 Miss. App. LEXIS 988 (Miss. Ct. App. 2005).

Where defendant possessed stolen property within a day or two of a burglary, tried to hide the property, and offered no explanation whatsoever for having it, the inference of burglary was sufficient to support the conviction. McQuirter v. State, 862 So. 2d 551, 2003 Miss. App. LEXIS 986 (Miss. Ct. App. 2003).

Defendant's act of entering a store constituted a "breaking" even though store's front door may already have been propped open when defendant arrived, as his passage through the door was the "act or force," however slight, employed to effect an entrance. Chaney v. State, 802 So. 2d 113, 2001 Miss. App. LEXIS 529 (Miss. Ct. App. 2001), overruled, Ladd v. State, 87 So. 3d 1108, 2012 Miss. App. LEXIS 239 (Miss. Ct. App. 2012).

The defendant was properly found to have constructively broken into a store where, knowing that the store was closed for business, he shrewdly gained entry by using the fabricated excuse that he was having trouble with his vehicle and needed to telephone his employer. Genry v. State, 767 So. 2d 302, 2000 Miss. App. LEXIS 426 (Miss. Ct. App. 2000).

Evidence was sufficient to show breaking and entering where the defendant and his accomplice entered a Goodwill Industries box in the parking lot of a shopping mall by crawling up a chute used for depositing donated items. Goldman v. State, 741 So. 2d 949, 1999 Miss. App. LEXIS 339 (Miss. Ct. App. 1999).

Burglary having been established by proof of breaking and entering with felonious intent, positive proof as to the identity of an article alleged to have been stolen is not necessary; but when such article is offered in evidence, there must be proof warranting a finding that it was taken from the burglarized premises. Lee v. State, 236 Miss. 716, 112 So. 2d 254, 1959 Miss. LEXIS 368 (Miss. 1959).

Proof showing that lock of house was broken, the door opened, and seed taken away without consent of owner, held to establish corpus delicti without showing that accused did the breaking. Yates v. State, 172 Miss. 581, 161 So. 147, 1935 Miss. LEXIS 179 (Miss. 1935).

Evidence only that the lock of the door out of which accused came had been tampered with was insufficient to establish breaking and entry. Griffin v. State, 111 Miss. 335, 71 So. 572, 1916 Miss. LEXIS 300 (Miss. 1916).

8. —Of intent.

Evidence presented was sufficient to support the jury's finding that the intent element of burglary was satisfied because based on the accounts of the victim and his fiancee of a rummaged truck interior and missing ring, the jury was free to infer defendant's intent or the lack thereof; a reasonable and fair-mined juror could have found defendant guilty of either burglary or criminal trespass, and the jury chose the former. Fontenot v. State, 287 So. 3d 322, 2019 Miss. App. LEXIS 582 (Miss. Ct. App. 2019).

Trial court properly denied defendant's motion for a directed verdict during a trial for burglary of a business, in violation of Miss. Code Ann. § 97-17-33(1), because the evidence showed that defendant entered a meat processing business with the unlawful intent to steal meat; even though the back door of the business was left open during deer hunting season so that customers could leave their field-dressed deer in the cooler, defendant entered with a purpose outside of the owner's consent. Fulgham v. State, 12 So. 3d 558, 2009 Miss. App. LEXIS 342 (Miss. Ct. App. 2009).

For purposes of burglary of an automobile, there was sufficient evidence for the jury to properly infer that defendant had the intent to steal when he broke into and entered the automobile in question because the evidence showed that: (1) after examining the passenger side, he found nothing to his liking; (2) he proceeded to the driver's side to continue his search; (3) when confronted by the owner's husband, the defendant neither apologized for being inside the automobile, nor explained that he thought it belonged to someone else; and (4) instead, the defendant refused to exit and informed the husband that he was taking the automobile. Riley v. State, 11 So. 3d 751, 2008 Miss. App. LEXIS 330 (Miss. Ct. App. 2008), cert. dismissed, 2009 Miss. LEXIS 301 (Miss. June 25, 2009).

Evidence was sufficient to show the defendant's intent to commit a crime after breaking into a church, notwithstanding his assertion that he broke in merely to use the telephone, where a cassette player was missing from the church and a witness testified that he saw stereo equipment in the back of the defendant's car that did not belong to a car. Harrison v.

State, 722 So. 2d 681, 1998 Miss. LEXIS 553 (Miss. 1998).

9. —Of value.

For purposes of burglary of an automobile, the State did not fail to present evidence that the automobile in question contained anything of value because the jury could have reasonably inferred that the automobile contained at least two seats, a steering wheel, a gear shift, acceleration and brake pedals, and other items necessary for operation of the automobile. Riley v. State, 11 So. 3d 751, 2008 Miss. App. LEXIS 330 (Miss. Ct. App. 2008), cert. dismissed, 2009 Miss. LEXIS 301 (Miss. June 25, 2009).

Evidence consisting of the defendant's palm print on a vending machine in a vocational complex that was burglarized was insufficient to support a conviction for business burglary under this section, since the palm print answered only the question of identity, and there was no additional evidence establishing that the defendant was the person who unlawfully entered the building with the intent to commit a crime. DeLoach v. State, 658 So. 2d 875, 1995 Miss. LEXIS 364 (Miss. 1995).

10. —Of fingerprints.

A fingerprint as the sole proof of guilt in a criminal prosecution is insufficient. Fingerprint evidence must be coupled with some other evidence, especially when the fingerprint was not found at the crime scene but on some object away from the scene. The State must corroborate the physical evidence with other proof of guilt. Thus, the evidence was insufficient to support a conviction of the defendant for burglary where a grocery store was burglarized sometime during the evening or early morning hours when the store was closed, an unidentified man was seen dropping the items stolen from the grocery store and running from a police officer at 4:00 a.m. that morning, the defendant's fingerprints were found on 3 of 6 stolen cartons of cigarettes recovered by the police department, and these cartons were generally inaccessible to the public during business hours at the grocery store. Corbin v. State, 585 So. 2d 713, 1991 Miss. LEXIS 523 (Miss. 1991).

Although fingerprint evidence alone will not support conviction for burglary, such evidence coupled with evidence of other circumstances tending to reasonably exclude hypothesis that print was impressed at time other than that of crime will support conviction. Wooten v. State, 513 So. 2d 1251, 1987 Miss. LEXIS 2853 (Miss. 1987).

Evidence was sufficient to support conviction for burglary where fingerprints of defendant impressed into fresh blood lifted from both inside and outside of broken glass, thus indicating that they were left after glass was broken and not before, and defendant had injuries consistent with blood and broken glass which coincided in time with break-in, and had misrepresented to police officers his name and circumstances of his injuries. Wooten v. State, 513 So. 2d 1251, 1987 Miss. LEXIS 2853 (Miss. 1987).

11. —Of possession or disposition of stolen property.

Evidence was sufficient to support defendant's conviction of burglary because he was found with a knife matching the one stolen from the victim's camp five minutes after law enforcement was dispatched to investigate, the remaining stolen items were discovered a few yards from where defendant was stopped, the knife was the only stolen item defendant could have concealed on his person, and when he was stopped defendant was sweating from which the jury could have inferred that he had been running from the camp to avoid detection. Shelvy v. State, 293 So. 3d 823, 2020 Miss. LEXIS 85 (Miss. 2020).

Trial court did not err in denying defendant's motion for a directed verdict because the evidence was sufficient to support a conviction for business burglary, in violation of Miss. Code Ann. § 97-17-33(1); the State presented evidence that fans and a grill found in defendant's truck were the property of a mental health center. McMillan v. State, 6 So. 3d 444, 2009 Miss. App. LEXIS 183 (Miss. Ct. App. 2009).

Mere possession of stolen articles, by itself, is not enough to convict a person for the crime of burglary. Thus, there was insufficient evidence to support a defendant's conviction for business burglary, involving the theft of chain saws from a sawmill, where the evidence showed only that the building containing the chain saws was locked at the close of business, several hours later the defendant was in the area and he came into possession of the chain saws, and that he eventually sold the chain saws, and there was no evidence, such as eyewitnesses, fingerprints, or footprints, linking the defendant to the breaking and entering of the building. Murphy v. State, 566 So. 2d 1201, 1990 Miss. LEXIS 443 (Miss. 1990).

Evidence was sufficient to support guilty verdict of accessory after the fact of larceny where defendant assisted in disposition of items of personal property taken in course of burglary. Buckley v. State, 511 So. 2d 1354, 1987 Miss. LEXIS 2646 (Miss. 1987).

Unexplained possession of property which has recently been stolen in burglary is prima facie, although by no means conclusive, evidence of guilt of burglary defendant. Weaver v. State, 481 So. 2d 832, 1985 Miss. LEXIS 2318 (Miss. 1985).

There was ample testimony to sustain jury's verdict where defendant was discovered with watch identified as the make taken from burglarized store, jury could have reasonably questioned genuineness of invoices of watches introduced by the defendant, and, moreover, officers, by means of "bug" device, heard conversation between state's witness and defendant in which purchase of watch with marked money was made, and officers later found marked money on premises where conversation took place. Moore v. State, 291 So. 2d 187, 1974 Miss. LEXIS 1724 (Miss. 1974).

12. —Of opportunity.

In a prosecution for attempted burglary, the trial court committed reversible error in allowing police officers to testify regarding evidence of another burglary found on the defendant's person at the time of his arrest for the attempted burglary where the testimony lacked any permissible probative value other than to imply that the defendant was guilty of the attempted burglary since he had apparently taken part in a prior burglary as well, the trial judge failed to conduct a probative value versus prejudicial effects test under Rule 403, Miss. R. Ev., and no limiting instruction was given to the jury regarding the testimony of the alleged prior offense. Watts v. State, 635 So. 2d 1364, 1994 Miss. LEXIS 100 (Miss. 1994).

The evidence was sufficient to support a conviction for burglary of a store where an eyewitness stated that he saw the defendant walk across the street from the store with 2 grocery bags and a fingerprint expert testified that the defendant's fingerprints matched those lifted from the scene of the burglary. Griffin v. State, 607 So. 2d 1197, 1992 Miss. LEXIS 603 (Miss. 1992).

Testimony placing accused within seventeen miles of place of burglary at a cafe on direct highway to place of burglary is admissible in evidence when accused claims to have been in different city at time of burglary. Bone v. State, 207 Miss. 868, 43 So. 2d 571, 1949 Miss. LEXIS 398 (Miss. 1949).

Testimony of officer describing car and its contents which officer saw on street on night of burglary near building burglarized and which he saw following afternoon in garage in another city where defendant had been placed in jail, claiming that neither he nor car had left city on night of burglary, is admissible in prosecution for burglary even though officer had no search warrant. Bone v. State, 207 Miss. 868, 43 So. 2d 571, 1949 Miss. LEXIS 398 (Miss. 1949).

13 —Of prior convictions or other crimes.

Defendant's conviction for burglary in violation of Miss. Code Ann. § 97-17-33(1) was inappropriate because the prosecutor impermissibly used defendant's prior conviction for attempted grand larceny as evidence of defendant's predisposition to steal to prove the element of intent of the indicted offense. Using the evidence for such a purpose ran afoul of the prohibition on the use of predisposition evidence found in Miss. R. Evid. 404(a). Robinson v. State, 42 So. 3d 598, 2010 Miss. App. LEXIS 86 (Miss. Ct. App. 2010).

A trial court committed reversible error in admitting 2 prior burglary convictions into evidence under Rule 609(a)(2), Miss. R. Ev. in order to impeach the testimony of the defendant where the prior convictions were 7 years old, the defendant was on trial for burglary and therefore the prior convictions involved identical crimes, the defendant's testimony was crucial to the defense since he was the only defense witness, and though credibility was a central issue, burglary is not necessarily a crime affecting veracity and therefore the low probative value of the convictions on the issue of credibility did not raise the need for the evidence. Townsend v. State, 605 So. 2d 767, 1992 Miss. LEXIS 468 (Miss. 1992).

Allowing state to introduce in burglary prosecution evidence connecting defendant to burglary for which defendant has not being charged as reversible error. Griffin v. State, 482 So. 2d 233, 1986 Miss. LEXIS 2348 (Miss. 1986).

14. —Confessions.

Evidence was sufficient to convict defendant of burglary of a church because, recanted or not, defendant's confession that he burglarized the church was direct evidence of the burglary. Triplett v. State, 264 So. 3d 808, 2018 Miss. App. LEXIS 421 (Miss. Ct. App. 2018), cert. denied, 265 So. 3d 180, 2019 Miss. LEXIS 103 (Miss. 2019).

There was no physical evidence linking defendant to the burglary but the jury was provided with physical evidence connecting his accomplice to the crime. Then, the jury was told that defendant was able to identify his accomplice close to the crime scene when said identification had already been suppressed due to the violation of defendant's Fifth and Sixth Amendment rights at the time of his arrest (Miranda violation); thus, the identification testimony by the officer was unquestionably prejudicial, the prosecutor's closing argument further compounded the problem by linking the physical evidence connecting the accomplice to the crime to defendant, and the trial court committed reversible error in denying defendant's motions for a mistrial and for a new trial. Carpenter v. State, 910 So. 2d 528, 2005 Miss. LEXIS 110 (Miss. 2005).

Evidence was more than sufficient to support defendant's guilt for the crimes with which he was charged where the law enforcement officers stated that defendant gave incriminating statements in which he acknowledged that he had burglarized several automobiles, gave descriptions of those vehicles, and described what items he took from them. Stewart v. State, 879 So. 2d 1089, 2004 Miss. App. LEXIS 763 (Miss. Ct. App. 2004).

When accused is deprived of no constitutional right by failure of trial court to furnish, or offer to furnish, an attorney to defend him on trial in state court for burglary, trial court is not in error in admitting confession of guilt where it is done without objection on part of defendant during his trial, unless it is manifestly given under duress or is obviously untrue. Odom v. State, 205 Miss. 572, 37 So. 2d 300, 1948 Miss. LEXIS 221 (Miss. 1948), cert. denied, 336 U.S. 932, 69 S. Ct. 747, 93 L. Ed. 1092, 1949 U.S. LEXIS 2611 (U.S. 1949).

Upon the trial of a defendant indicted for burglary testimony that the outer door of the building had been broken and the cash drawer therein opened, even in the absence of direct evidence that anything had been stolen, is a sufficient showing of an intent to steal and of the corpus delicti to authorize the admission in evidence of defendant's confession. Brown v. State, 85 Miss. 27, 37 So. 497, 1904 Miss. LEXIS 130 (Miss. 1904).

15. Questions for jury.

In a prosecution for burglary under this section, the trial court did not err in denying an instruction on the lesser included offense of trespass where the defendant argued only that he was not guilty because he had permission to be on the property and that the crime charged should have been "house burglary" rather than "business burglary," and therefore no defense was presented that he was guilty only of trespass. Wilson v. State, 639 So. 2d 1326, 1994 Miss. LEXIS 348 (Miss. 1994).

In prosecution for burglary by stealing of automobile the question of truth or falsity of testimony of defendant's accomplice was for jury. Strickland v. State, 220 Miss. 71, 70 So. 2d 1, 1954 Miss. LEXIS 410 (Miss. 1954).

In prosecution for burglary and larceny, the testimony of the owner of the building was a question for the determination of the jury under proper instructions as to whether or not he had given the accused consent to enter the building. Holderfield v. State, 215 Miss. 564, 61 So. 2d 385, 1952 Miss. LEXIS 599 (Miss. 1952).

Whether defendant confessed to burglary before or after punishment by officers was administered to him is question for jury under conflicting evidence. Scarbrough v. State, 204 Miss. 487, 37 So. 2d 748, 1948 Miss. LEXIS 383 (Miss. 1948).

Weight of testimony of accomplice in burglary held for jury, where there was no evidence as to accused's reputation for veracity, accomplice was not impeached, and no evidence of alibi. Brownlee v. State, 165 Miss. 193, 147 So. 339, 1933 Miss. LEXIS 300 (Miss. 1933).

In burglary prosecution, whether goods, wares, and merchandise, were kept in store for use and sale alleged, held for jury. Osser v. State, 165 Miss. 680, 145 So. 754, 1933 Miss. LEXIS 277 (Miss. 1933).

16. Instructions.

Trial court's jury instruction regarding auto burglary did not constitute plain error as the jury was properly instructed as to the essential elements of auto burglary because, to convict defendant of auto burglary, the instruction required the jury to find that he unlawfully broke and entered the victim's vehicle with the intent to take, steal, and carry away the personal property therein; and, by convicting defendant, the jury necessarily found that the victim's vehicle contained personal property defendant intended to steal. Esters v. State, 281 So. 3d 844, 2019 Miss. App. LEXIS 8 (Miss. Ct. App.), cert. denied, — So. 3d —, 2019 Miss. LEXIS 309 (Miss. 2019).

Where a defendant had been indicted for violating Miss. Code Ann. § 97-17-33, the State was not entitled to lesser-included jury instruction for accessory after the fact. Only a defendant, not the State could request a lesser-included offense instruction, and accessory after the fact was not a lesser-included offense to burglary. Hall v. State, 127 So. 3d 202, 2013 Miss. LEXIS 649 (Miss. 2013).

Trial court did not err in denying defendant a jury instruction on the lesser-included offense of trespass during his trial for business burglary because if the jury had believed defendant's testimony that he was not present when a storage locker was burglarized, it would have believed that he never entered the storage locker and had not committed trespass. Gray v. State, 931 So. 2d 627, 2006 Miss. App. LEXIS 52 (Miss. Ct. App. 2006).

Where defendant was convicted of burglary of a building, the trial court had not erred in denying his proposed instruction on eyewitness testimony because defendant's identification and subsequent conviction did not rest entirely upon the testimony of a single witness and the State presented evidence that property stolen from the store was recovered from defendant's truck, which provided additional independent evidence of his involvement in the crime. Powell v. State, 925 So. 2d 878, 2005 Miss. App. LEXIS 731 (Miss. Ct. App. 2005), cert. denied, 927 So. 2d 750, 2006 Miss. LEXIS 183 (Miss. 2006).

Portion of defendant's requested instruction on identification testimony was consistent with the Mississippi Supreme Court's ruling in Davis v. State, and could have been granted, but the trial court's substituted instruction did not constitute reversible error, as the trial court properly instructed jury it had to acquit defendant, unless the State proved beyond a reasonable doubt that defendant committed the burglary. Coleman v. State, 841 So. 2d 1170, 2003 Miss. App. LEXIS 186 (Miss. Ct. App. 2003).

When a defendant's requested instruction is a proper statement of the law and is the only instruction that presents his or her theory of the case, it should be granted. Murphy v. State, 566 So. 2d 1201, 1990 Miss. LEXIS 443 (Miss. 1990).

It was not error for trial court to submit to jury supplemental instruction which defined "breaking" element of crime of burglary, although danger that supplemental instruction might cause jury to single out and focus upon point presented in it and give it undue importance was recognized, where trial judge added to supplemental instruction sentence stating that jury was to read and consider that instruction along with other instructions. Wright v. State, 512 So. 2d 679, 1987 Miss. LEXIS 2710 (Miss. 1987).

Burglary defendant is entitled to instruction to effect that uncorroborated testimony of accomplice should be viewed with great caution and suspicion where without testimony of accomplice there is nothing to indicate that defendant was in any way involved in burglary. Holmes v. State, 481 So. 2d 319, 1985 Miss. LEXIS 2434 (Miss. 1985).

Testimony by defense witnesses to effect that defendant was sleeping at trailer at time of burglary with which defendant is charged, contradicting state witnesses placing defendant at scene of burglary, entitles defendant to have alibi instruction given. Holmes v. State, 481 So. 2d 319, 1985 Miss. LEXIS 2434 (Miss. 1985).

An instruction to the jury properly setting forth the essentials of burglary as to the breaking and entering and the intent, but the personal property, the object of the intent was described as money of the value of $50 or more, cigarettes and a pistol was proper were the indictment did not allege or charge the value of the single article alleged to have been stolen or carried away because the indictment did allege the value of the money to be $80 and the proof showed that at least $50 of such money was actually stolen and carried away. Lewis v. State, 212 Miss. 775, 55 So. 2d 475, 1951 Miss. LEXIS 509 (Miss. 1951).

Instruction that the burglary charged may be proven by circumstances, and it is not necessary to have eyewitness to deed if circumstances in evidence are sufficient to create in minds of jury belief that accused is guilty beyond reasonable doubt and to exclusion of every other reasonable hypothesis than that of guilt of accused is correct charge to jury. Bone v. State, 207 Miss. 868, 43 So. 2d 571, 1949 Miss. LEXIS 398 (Miss. 1949).

Instruction referring to defendant and another breaking into house held not objectionable as depriving defendant of severance granted in trial, since it was proper to show who did the breaking, as each was guilty if both broke into building, or if one did it with assistance of the other. Yates v. State, 172 Miss. 581, 161 So. 147, 1935 Miss. LEXIS 179 (Miss. 1935).

17. Conviction.

Evidence was sufficient to convict defendant of attempted burglary of a truck because the owner of the truck provided his eyewitness account, stating that he saw defendant trying to get into his truck; an officer testified that, when he arrived, defendant was walking away from the vehicle; the officer arrested defendant based on the incident report; a copy of the owner's original title was admitted into evidence; and, while defendant stated that he had bought the truck, the owner testified that he had never seen defendant before that day and that his truck was not for sale. Anderson v. State, 201 So. 3d 497, 2016 Miss. App. LEXIS 13 (Miss. Ct. App.), cert. denied, 203 So. 3d 1133, 2016 Miss. LEXIS 431 (Miss. 2016).

Sufficient evidence supported defendant's burglary conviction as the evidence was sufficient to show that the victim's room in the rooming house where the burglary occurred constituted a dwelling for the purposes of Miss. Code Ann. § 97-17-33(1) (Rev. 2006). The room was the victim's residence as he paid rent and was the only individual with a key to the room, all of his belongings were in the room, he repeatedly referred to his room as his "home" in his testimony, and there was no evidence that the room was not his permanent residence or that he did not plan to remain there. Taylor v. State, 109 So. 3d 589, 2013 Miss. App. LEXIS 59 (Miss. Ct. App. 2013).

Where the evidence showed that defendant approached a vehicle and looked inside before approaching a second vehicle, looking inside, breaking its window, and fleeing after the vehicle's alarm sounded, defendant was not entitled to a jury instruction on the defense of abandonment because it was extremely likely that defendant would have burglarized the second vehicle if its car alarm had not sounded. Because the burglary would have been completed if defendant had not been interrupted by the car alarm, the trial judge committed no error in refusing to allow the abandonment instruction, as it was not supported by the evidence. Hawkins v. State, 11 So. 3d 123, 2008 Miss. App. LEXIS 744 (Miss. Ct. App. 2008), cert. denied, 12 So. 3d 531, 2009 Miss. LEXIS 285 (Miss. 2009).

Evidence was sufficient to convict defendant of attempted burglary of an automobile where it showed that defendant approached a vehicle and looked inside before approaching a second vehicle, looking inside, breaking its window, and fleeing after the vehicle's alarm sounded. Hawkins v. State, 11 So. 3d 123, 2008 Miss. App. LEXIS 744 (Miss. Ct. App. 2008), cert. denied, 12 So. 3d 531, 2009 Miss. LEXIS 285 (Miss. 2009).

Evidence was sufficient to support defendant's burglary conviction, where the prosecution presented evidence that (1) defendant's fingerprints were found on a coin dispenser located in a restricted portion of the bank; (2) a patrolman witnessed defendant emerging from a back door of the bank at approximately 1:38 a.m.; (3) defendant was dressed in a heavy jacket and long sleeve shirt in the middle of May; (4) the point of entry was a broken glass window; (5) defendant had broken glass particles in his clothing and on his person and (6) defendant had possession of a bag of coins taken from the bank. Williams v. State, 919 So. 2d 250, 2005 Miss. App. LEXIS 443 (Miss. Ct. App. 2005).

Evidence was sufficient to convict defendant of a burglary of a high school, as two witnesses testified they heard defendant admit he had committed the burglary, and defendant's statement placed him inside the school. Hunter v. State, 2004 Miss. App. LEXIS 700 (Miss. Ct. App. July 20, 2004), op. withdrawn, sub. op., 878 So. 2d 1066, 2004 Miss. App. LEXIS 968 (Miss. Ct. App. 2004).

State proved that defendant entered auto repair shop with the intent to steal valuable items inside even though no item of value was on his person when he was arrested hanging from a window of the shop's building around midnight, as the fair and logical inference to be drawn from the evidence was that defendant intended to take the valuable items since he had no other reasonable explanation for the circumstances. Brown v. State, 799 So. 2d 870, 2001 Miss. LEXIS 304 (Miss. 2001).

Since conspiracy and burglary are separate and distinct crimes requiring proof of different elements, a defendant did not have a double jeopardy claim based on the prosecution of these 2 crimes arising from the same incident, despite the fact that the prosecution chose to prosecute the defendant for these crimes at separate trials. House v. State, 645 So. 2d 931, 1994 Miss. LEXIS 537 (Miss. 1994).

A jury would have been warranted in finding the defendant guilty as an accessory after the fact to burglary or larceny, but not as a principal to burglary, where the defendant was present at the time of the burglary of a store but neither assisted nor encouraged the perpetrator of the burglary by any word or act to commit the crime. Smith v. State, 523 So. 2d 1028, 1988 Miss. LEXIS 190 (Miss. 1988).

Where defendant helped plan the crime, watched and stood guard while other parties did the actual breaking and entering of gasoline station, defendant was properly convicted of burglary notwithstanding he did not engage in the actual breaking. Wilkerson v. State, 207 Miss. 556, 42 So. 2d 745, 1949 Miss. LEXIS 365 (Miss. 1949).

Judgment reciting verdict finding accused guilty of burglary, and adjudging accused guilty of burglary and larceny, held good; word "larceny" being surplusage. Brownlee v. State, 165 Miss. 193, 147 So. 339, 1933 Miss. LEXIS 300 (Miss. 1933).

Conviction under indictment for burglary with intent to commit larceny not disturbed in absence of evidence that burglarious entry had different object. Moseley v. State, 92 Miss. 250, 45 So. 833, 1908 Miss. LEXIS 178 (Miss. 1908).

Under indictment having two counts conviction must be referred to sufficient count and not insufficient one. Moseley v. State, 92 Miss. 250, 45 So. 833, 1908 Miss. LEXIS 178 (Miss. 1908).

Under indictment charging burglary and larceny, verdict of "guilty as charged" is one of guilty of burglary alone. Dees v. State, 89 Miss. 754, 42 So. 605, 1906 Miss. LEXIS 61 (Miss. 1906).

18. Miscellaneous.

Where defendant was convicted of burglary of a building, although the prosecution violated Miss. Unif. Cir. & County Ct. Prac. R. 9.04 for failing to provide defendant with a copy of his false pretense conviction, the error did not require reversal. Although defendant argued that the State's use of his false pretense conviction to impeach him was devastating to his credibility, the instant case was not a circumstantial one and defendant was caught in the criminal act of which he was convicted. Powell v. State, 925 So. 2d 878, 2005 Miss. App. LEXIS 731 (Miss. Ct. App. 2005), cert. denied, 927 So. 2d 750, 2006 Miss. LEXIS 183 (Miss. 2006).

Evidence was sufficient to sustain a conviction for auto burglary because defendant was found hiding in the victim's vehicle shortly after the crime with no reasonable explanation for being there, he was lying out of sight, he was breathing hard and sweating, and a police officer had seen two men running in the area. Qualls v. State, 947 So. 2d 365, 2007 Miss. App. LEXIS 21 (Miss. Ct. App. 2007).

Where defendant's sentence for burglary was the maximum, but was within the statutory limits, there was no violation of U.S. Const. amend. VIII in terms of cruel and unusual punishment, and the fact the conviction was defendant's first felony conviction was inconsequential. Nichols v. State, 826 So. 2d 1288, 2002 Miss. LEXIS 293 (Miss. 2002).

Where the jury was properly instructed as to the elements of burglary and grand larceny and the prosecutor did not elicit testimony specific to the statutory elements of burglary, the jury's verdict to acquit on the burglary charge and convict on the grand larceny charge was supported by the evidence. Allen v. State, 755 So. 2d 47, 1999 Miss. App. LEXIS 697 (Miss. Ct. App. 1999).

A burglary conviction is not ordinarily admissible under Rule 609(a)(2), Miss. R. Ev., as a crime involving dishonesty or false statement. Townsend v. State, 605 So. 2d 767, 1992 Miss. LEXIS 468 (Miss. 1992).

Records of criminal offenses are kept pursuant to § 45-27-1. The legislature of Mississippi has specifically authorized expungment of criminal offender records in limited cases-youth court cases, §§ 43-21-159 and 43-21-265; first offense misdemeanor convictions occurring prior to age 23, § 99-19-71; drug possession convictions occurring prior to age 26, § 41-29-150; purchase of alcoholic beverages by one under age 21, § 67-3-70; and municipal court convictions, § 21-23-7. Expungment of felony convictions which arose pursuant to guilty pleas are governed by § 99-15-57 which provides that any person who pled guilty within 6 months prior to the effective date of § 99-15-26 may apply to the court for an order expunging his or her criminal records. Under §§ 99-15-57 and 99-15-26 a circuit court has the power to expunge a felony conviction pursuant to a guilty plea under certain conditions. Accordingly, a petitioner who pled guilty to the felony of burglary might have been eligible for relief pursuant to §§ 99-15-57 and 99-15-26 if his guilty plea had occurred on or after October 1, 1982, that being the earliest date to satisfy the "within 6 months prior to" March 31, 1983, requirement of § 99-15-57. However, the petitioner pleaded guilty to burglary on October 9, 1979, 3 years prior to October 1, 1982, and admitted that he did not fall within the criterion in any of the statutes authorizing expungment, and thus the trial court did not err in denying his petition for expungment. Caldwell v. State, 564 So. 2d 1371, 1990 Miss. LEXIS 262 (Miss. 1990).

Circuit Court was within its discretion in instructing jury that they should deliberate further after jury sent court note at 5:50 p.m. indicating that it was deadlocked; argument that court erred in failing to consider jurors' personal needs, i.e. that it was nearing suppertime, was rejected. Wright v. State, 512 So. 2d 679, 1987 Miss. LEXIS 2710 (Miss. 1987).

Sentence of 6 years was not excessive for conviction of burglary where defendant was 21 years old at time of sentence, married and had 2 children, had no prior criminal record, co-operated with authorities, and crime was not one of violence, because sentence was within maximum penalty provided by statute for that offense. Turbo Trucking Co. v. Rollins, 511 So. 2d 148, 1987 Miss. LEXIS 2721 (Miss. 1987).

Petitioner was subject to 7-year sentence for burglary, where the documentation presented for sentencing in the trial court indicated that he had 2 prior convictions-for grand larceny and for business burglary-and had been sentenced to separate terms of one year or more in the state penal institution. Rideout v. State, 496 So. 2d 667, 1986 Miss. LEXIS 2606 (Miss. 1986).

Where it appeared that when accused's burglary case was called he requested a continuance in order to obtain counsel, which was granted for one day, and a request for continuance made the following day for the same purpose was denied, whereupon accused was tried and convicted, accused was not deprived of due process of law guaranteed by the 14th amendment to the United States Constitution, it appearing that the accused had had ample notice of the charge made against him and ample opportunity to employ counsel to defend him if he so desired, he was a man of at least average intelligence, had cross-examined witnesses at his trial, and testimony on his behalf showed that he had a clear understanding of the case made against him. Poole v. State, 229 Miss. 176, 90 So. 2d 212, 1956 Miss. LEXIS 598 (Miss. 1956), cert. denied, 353 U.S. 988, 77 S. Ct. 1286, 1 L. Ed. 2d 1144, 1957 U.S. LEXIS 845 (U.S. 1957).

OPINIONS OF THE ATTORNEY GENERAL

If a person is granted bail by a municipal court on a charge of aggravated assault and while out on bail a justice court finds probable cause that the person has committed commercial burglary, the justice court should revoke bail for the aggravated assault charge and shall order the person detained, without bail, on the commercial burglary charge, pending trial on the aggravated assault charge. Turnage, June 26, 2006, A.G. Op. 06-0246.

RESEARCH REFERENCES

ALR.

Gambling or lottery paraphernalia as subject of larceny, burglary, or robbery. 51 A.L.R.2d 1396.

Maintainability of burglary charge, where entry into building is made with consent. 58 A.L.R.4th 335.

What is "building" or "house" within burglary or breaking and entering statute. 68 A.L.R.4th 425.

Burglary, breaking, or entering of motor vehicle. 72 A.L.R.4th 710.

Am. Jur.

13 Am. Jur. 2d, Burglary §§ 5, 6.

2 Am. Jur. Trials, Investigating Particular Crimes §§ 9-14 (burglary).

3 Am. Jur. Trials, Preparing and Using Photographs in Criminal Cases § 10 (burglary scene).

13 Am. Jur. Trials, Defending Minor Felony Cases §§ 1 et seq.

CJS.

12A C.J.S., Burglary §§ 25-29.

§ 97-17-35. Burglary; possession of burglar's tools.

It is unlawful for any person to have in his possession implements, tools, or instruments designed to aid in the commission of burglary, larceny or robbery; and on the conviction of any person thereof, he shall be punished by imprisonment in the penitentiary not exceeding five (5) years, or in the county jail not exceeding one year. The carrying concealed about one's person, or in one's baggage, implements, tools, or instruments peculiarly adapted to aid in the commission of burglary, larceny or robbery, shall be prima facie evidence of intention to use them for such purpose.

HISTORY: Codes, 1892, § 997; 1906, § 1074; Hemingway's 1917, § 802; 1930, § 818; 1942, § 2044; Laws, 1956, ch. 246.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. What are burglar's tools.
3. Possession.
4. Evidence.
5. Sentence.

1. In general.

The elements of the offense of possession of burglary tools are as follows: (1) adaptation and design of the tool or implement for breaking and entering; (2) possession of such tools by one with knowledge of their character, and (3) a general intent to use or employ them in breaking and entering. Pamphlet v. State, 271 So. 2d 403, 1972 Miss. LEXIS 1274 (Miss. 1972).

Although it is not necessary to show a specific intent to use the tools in a burglary, there must be evidence either that the tools have probably been recently used for the purpose of unlawfully breaking and entering or that they are about to be used for such purpose. Pamphlet v. State, 271 So. 2d 403, 1972 Miss. LEXIS 1274 (Miss. 1972).

It is not an essential element of the crime of possession of burglary tools that any particular tool be specifically designed for the purpose of being used in a burglary, but there must be evidence from which the jury can find the intent to use them in breaking and entering. Pamphlet v. State, 271 So. 2d 403, 1972 Miss. LEXIS 1274 (Miss. 1972).

The elements of the offense of possessing burglar's tools are adaptation for breaking and entering, possession with knowledge of their character, and a general intent to use them in breaking and entering. Johnson v. State, 246 Miss. 182, 145 So. 2d 156, 1962 Miss. LEXIS 521 (Miss. 1962), cert. denied, 372 U.S. 702, 83 S. Ct. 1018, 10 L. Ed. 2d 125, 1963 U.S. LEXIS 1800 (U.S. 1963).

To warrant a conviction of the possessor of articles susceptible of lawful use, it is sufficient to prove a general felonious intent, without showing an intent to commit a particular crime. Fuqua v. State, 246 Miss. 191, 145 So. 2d 152, 1962 Miss. LEXIS 522 (Miss. 1962), cert. denied, 372 U.S. 709, 83 S. Ct. 1018, 10 L. Ed. 2d 125, 1963 U.S. LEXIS 1814 (U.S. 1963).

2. What are burglar's tools.

Key question in determining whether a particular tool qualifies as a burglary tool is whether the evidence reveals circumstances from which it may be inferred beyond a reasonable doubt that the possessor intended that he or some other person use the article or articles in aid of burglary or other similar crime. Peters v. State, 920 So. 2d 1050, 2006 Miss. App. LEXIS 104 (Miss. Ct. App. 2006).

Even tools designed for a lawful purpose can be considered burglar's tools. Peters v. State, 920 So. 2d 1050, 2006 Miss. App. LEXIS 104 (Miss. Ct. App. 2006).

Where a bolt cutter, a long crowbar, several hammers and other crowbars together with a burglar alarm jumper were found in the automobile of the defendant, he was properly convicted of possession of burglar's tools. McCollum v. State, 197 So. 2d 252, 1967 Miss. LEXIS 1523 (Miss. 1967).

It is not necessary that a tool or article be designed and made solely as a burglar's tool to warrant a conviction under this section [Code 1942, § 2044], if they are possessed for the purpose of committing burglary. Fuqua v. State, 246 Miss. 191, 145 So. 2d 152, 1962 Miss. LEXIS 522 (Miss. 1962), cert. denied, 372 U.S. 709, 83 S. Ct. 1018, 10 L. Ed. 2d 125, 1963 U.S. LEXIS 1814 (U.S. 1963).

The possession of particular articles may or may not be unlawful under the statute, depending on whether the evidence reveals circumstances from which unlawful use is intended. Fuqua v. State, 246 Miss. 191, 145 So. 2d 152, 1962 Miss. LEXIS 522 (Miss. 1962), cert. denied, 372 U.S. 709, 83 S. Ct. 1018, 10 L. Ed. 2d 125, 1963 U.S. LEXIS 1814 (U.S. 1963).

3. Possession.

The possession of burglar's tools may be actual or constructive, joint or individual. Two persons may have constructive possession, or one may have actual possession and the other constructive possession. Johnson v. State, 246 Miss. 182, 145 So. 2d 156, 1962 Miss. LEXIS 521 (Miss. 1962), cert. denied, 372 U.S. 702, 83 S. Ct. 1018, 10 L. Ed. 2d 125, 1963 U.S. LEXIS 1800 (U.S. 1963).

Constructive possession of burglar's tools may be shown by evidence of the surrounding circumstances. Johnson v. State, 246 Miss. 182, 145 So. 2d 156, 1962 Miss. LEXIS 521 (Miss. 1962), cert. denied, 372 U.S. 702, 83 S. Ct. 1018, 10 L. Ed. 2d 125, 1963 U.S. LEXIS 1800 (U.S. 1963).

One riding as a passenger in an automobile may be found to be in constructive possession of burglar's tools therein, where there are indications that her presence was not temporary and her handbag contained a police badge and two loaded pistols. Johnson v. State, 246 Miss. 182, 145 So. 2d 156, 1962 Miss. LEXIS 521 (Miss. 1962), cert. denied, 372 U.S. 702, 83 S. Ct. 1018, 10 L. Ed. 2d 125, 1963 U.S. LEXIS 1800 (U.S. 1963).

Where the record showed that the owner had complete control and possession of the automobile, and the burglary tools, articles and instruments found therein belonged to him, mere fact that the accused was a passenger in the automobile while the tools were in the trunk thereof was insufficient to sustain his conviction for possession of burglary tools. Newton v. State, 232 Miss. 114, 98 So. 2d 116, 1957 Miss. LEXIS 450 (Miss. 1957).

4. Evidence.

Evidence was more than sufficient to sustain defendant's conviction for possession of burglary tools where the evidence showed beyond a reasonable doubt that he possessed a crowbar knowing of its character, and that he intended to use, or had in fact used, the crowbar to burglarize county property. Peters v. State, 920 So. 2d 1050, 2006 Miss. App. LEXIS 104 (Miss. Ct. App. 2006).

Where defendant attempted to remove tires from a vehicle in a car lot at two o'clock in the morning, and police found a screwdriver and a small flashlight in his possession and a four-way lug wrench was on the ground, the evidence supported his conviction for possession of larceny tools. The State was not required to present direct testimony that defendant lacked consent to remove the tires, because possession of larceny tools did not require proof of a "taking", permissive or otherwise. Brownlee v. State, 912 So. 2d 1000, 2005 Miss. App. LEXIS 187 (Miss. Ct. App. 2005).

Burglar's tools observed by a police officer who saw them through the window of an automobile which he had stopped after receiving information which constituted probable cause that its occupants had recently engaged in a felony were properly introduced in evidence at the trial of the driver of the automobile. McCollum v. State, 197 So. 2d 252, 1967 Miss. LEXIS 1523 (Miss. 1967).

In view of testimony that tools of this type were commonly found in the possession of burglars, the jury could find defendants guilty of possession of burglary tools where a sledge hammer, to which a cold chisel had been welded, and another tool, which could be used as a crowbar or wedge, was found in the car which the defendants were driving, and the earpiece of a walkie-talkie was found in the pocket of one of the defendants. Corn v. State, 250 Miss. 157, 164 So. 2d 777, 1964 Miss. LEXIS 452 (Miss. 1964).

A conviction for possessing burglar's tools is warranted by proof of possession of 150 skeleton keys of various kinds, socket wrenches, loaded pistols, extra ammunition, policeman's badge, a keyhole flashlight, kid gloves, spot lights, and a stolen pistol. Fuqua v. State, 246 Miss. 191, 145 So. 2d 152, 1962 Miss. LEXIS 522 (Miss. 1962), cert. denied, 372 U.S. 709, 83 S. Ct. 1018, 10 L. Ed. 2d 125, 1963 U.S. LEXIS 1814 (U.S. 1963).

5. Sentence.

Where defendant was convicted for possession of larceny tools, the circuit court properly sentenced him to five years with all five suspended. His sentence was clearly within statutory limits and not disproportionate to the crime. Brownlee v. State, 912 So. 2d 1000, 2005 Miss. App. LEXIS 187 (Miss. Ct. App. 2005).

RESEARCH REFERENCES

ALR.

Propriety of specific jury instructions as to credibility of accomplices. 4 A.L.R.3d 351.

Validity, construction and application of statutes relating to burglars' tools. 33 A.L.R.3d 798.

What is "building" or "house" within burglary or breaking and entering statute. 68 A.L.R.4th 425.

Am. Jur.

13 Am. Jur. 2d, Burglary §§ 68-71.

CJS.

12A C.J.S., Burglary § 78.

§ 97-17-37. Burglary; with explosives.

Any person, who, with intent to commit crime, breaks and enters, either by day or by night, any building, whether inhabited or not, and opens or attempts to open any vault, safe or other secure place by the use of nitroglycerine, dynamite, gunpowder or any other explosive, shall be deemed guilty of burglary with explosives.

Any person duly convicted of burglary with explosives shall be punished by imprisonment in the state penitentiary for a term of not less than five (5) years nor more than forty (40) years.

HISTORY: Codes, 1930, §§ 819, 820; 1942, §§ 2045, 2046; Laws, 1926, ch. 176; Laws, 1940, ch. 240.

Cross References — Burglary of dwelling, defined as crime of violence, see § 97-3-2.

Limitations of prosecutions generally, see § 99-1-5.

JUDICIAL DECISIONS

1. In general.

The word "crime" in the burglary statutes includes misdemeanors as well as felonies. Ashley v. State, 538 So. 2d 1181, 1989 Miss. LEXIS 24 (Miss. 1989).

RESEARCH REFERENCES

ALR.

What is "building" or "house" within burglary or breaking and entering statute. 68 A.L.R.4th 425.

Am. Jur.

13 Am. Jur. 2d, Burglary § 19.

2 Am. Jur. Trials, Investigating Particular Crimes § 13 (safecracking).

CJS.

12A C.J.S., Burglary § 30.

§ 97-17-39. Penalties for injuring, destroying or defacing certain cemetery property, public buildings, schools or churches, or property thereof.

If any person, by any means whatever, shall willfully or mischievously injure or destroy any of the burial vaults, urns, memorials, vases, foundations, bases or other similar items in a cemetery, or injure or destroy any of the work, materials, or furniture of any courthouse or jail, or other public building, or schoolhouse or church, or deface any of the walls or other parts thereof, or shall write, or make any drawings or character, or do any other act, either on or in said building or the walls thereof, or shall deface or injure the trees, fences, pavements, or soil, on the grounds belonging thereto, or an ornamental or shade tree on any public road or street leading thereto, such person, upon conviction, for such offense, shall be punished as follows:

(a) If the damage caused by the destruction or defacement of such property has a value of less than Five Hundred Dollars ($500.00), any person who is convicted of this offense may be fined not more than One Thousand Dollars ($1,000.00) or be imprisoned in the county jail for not more than one (1) year, or both if the court finds substantial and compelling reasons why the offender cannot be safely and effectively supervised in the community, is not amenable to community-based treatment, or poses a significant risk to public safety. If such a finding is not made, the court shall suspend the sentence of imprisonment and impose a period of probation not exceeding one (1) year or a fine of not more than One Thousand Dollars ($1,000.00), or both. Any person convicted of a third or subsequent offense under this subsection where the value of the property is not less than Five Hundred Dollars ($500.00), shall be imprisoned in the Penitentiary for a term not exceeding three (3) years or fined an amount not exceeding Two Thousand Dollars ($2,000.00), or both.

(b) If the damage caused by the destruction or defacement of such property has a value equal to or exceeding Five Hundred Dollars ($500.00) or more but less than Five Thousand Dollars ($5,000.00), any person who is convicted of this offense shall be fined not more than Five Thousand Dollars ($5,000.00) or be imprisoned in the State Penitentiary for up to five (5) years, or both.

(c) If the damage caused by the destruction or defacement of such property has a value of Five Thousand Dollars ($5,000.00) or more but less than Twenty-five Thousand Dollars ($25,000.00), any person who is convicted of this offense shall be fined not more than Ten Thousand Dollars ($10,000.00) or be imprisoned in the Penitentiary for up to ten (10) years, or both.

(d) If the damage caused by the destruction or defacement of such property has a value of Twenty-five Thousand Dollars ($25,000.00) or more, any person who is convicted of this offense shall be fined not more than Ten Thousand Dollars ($10,000.00) or be imprisoned in the Penitentiary for up to twenty (20) years, or both.

HISTORY: Codes, 1880, § 2978; 1892, § 989; 1906, § 1065; Hemingway's 1917, § 793; 1930, § 809; 1942, § 2035; Laws, 1989, ch. 451, § 1; Laws, 2014, ch. 457, § 14, eff from and after July 1, 2014.

Cross References — Powers of board of supervisors over courthouse and jail, see §§ 19-3-41, 19-7-23.

Responsibility of sheriff for courthouse and jail, see §§ 19-25-69, 19-25-71, 47-1-49, 47-1-51.

Crime of looting, see § 97-17-65.

Malicious mischief, see § 97-17-67.

Federal Aspects— Native American Graves Protection and Repatriation Act, P. L. 101-601, 25 USCS § 3001 et seq.

RESEARCH REFERENCES

ALR.

Liability for desecration of graves and tombstones. 77 A.L.R.4th 108.

Am. Jur.

52 Am. Jur. 2d, Malicious Mischief and Related Offenses § 11.

13 Am. Jur. Trials, Defending Minor Felony Cases §§ 1 et seq.

CJS.

54 C.J.S., Malicious or Criminal Mischief or Damage to Property §§ 6, 10.

§ 97-17-41. Grand larceny; felonious taking of personal property; felonious taking of property of established place of worship; penalties.

(1) Any person who shall be convicted of taking and carrying away, feloniously, the personal property of another, of the value of One Thousand Dollars ($1,000.00) or more, but less than Five Thousand Dollars ($5,000.00), shall be guilty of grand larceny, and shall be imprisoned in the Penitentiary for a term not exceeding five (5) years; or shall be fined not more than Ten Thousand Dollars ($10,000.00), or both. The total value of property taken and carried away by the person from a single victim shall be aggregated in determining the gravity of the offense.

(2) Any person who shall be convicted of taking and carrying away, feloniously, the personal property of another, of the value of Five Thousand Dollars ($5,000.00) or more, but less than Twenty-five Thousand Dollars ($25,000.00), shall be guilty of grand larceny, and shall be imprisoned in the Penitentiary for a term not exceeding ten (10) years; or shall be fined not more than Ten Thousand Dollars ($10,000.00), or both. The total value of property taken and carried away by the person from a single victim shall be aggregated in determining the gravity of the offense.

(3) Any person who shall be convicted of taking and carrying away, feloniously, the personal property of another, of the value of Twenty-five Thousand Dollars ($25,000.00) or more, shall be guilty of grand larceny, and shall be imprisoned in the Penitentiary for a term not exceeding twenty (20) years; or shall be fined not more than Ten Thousand Dollars ($10,000.00), or both. The total value of property taken and carried away by the person from a single victim shall be aggregated in determining the gravity of the offense.

(4)(a) Any person who shall be convicted of taking and carrying away, feloniously, the property of a church, synagogue, temple or other established place of worship, of the value of One Thousand Dollars ($1,000.00) or more, shall be guilty of grand larceny, and shall be imprisoned in the Penitentiary for a term not exceeding ten (10) years, or shall be fined not more than Ten Thousand Dollars ($10,000.00), or both.

(b) Any person who shall be convicted of taking and carrying away, feloniously, the property of a church, synagogue, temple or other established place of worship, of the value of Twenty-five Thousand Dollars ($25,000.00) or more, shall be guilty of grand larceny, and shall be imprisoned in the Penitentiary for a term not exceeding twenty (20) years, or shall be fined not more than Ten Thousand Dollars ($10,000.00), or both. The total value of property taken and carried away by the person from a single victim shall be aggregated in determining the gravity of the offense.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 4(63); 1857, ch. 64, art. 190; 1871, § 2652; 1880, § 2901; 1892, § 1173; 1906, § 1251; Hemingway's 1917, § 981; 1930, § 1009; 1942, § 2240; Laws, 1966, ch. 359, § 1; Laws, 1992, ch. 380, § 1; Laws, 1993, ch. 337, § 1; Laws, 1996, ch. 544, § 2; Laws, 1997, ch. 473, § 5; Laws, 2003, ch. 499, § 1; Laws, 2004, ch. 526, § 7; Laws, 2014, ch. 457, § 15, eff from and after July 1, 2014.

Cross References — Crime of looting, see § 97-17-65.

Theft of credit cards, see § 97-19-13.

Application of this section to the penalty for a conviction of shoplifting merchandise with a stated price exceeding two hundred and fifty dollars, see § 97-23-93.

Limitations of prosecutions, generally, see § 99-1-5.

Description of property in indictments for larceny, see § 99-7-31.

Enhancement of offenses listed in 99-19-401(2) if the instrumentality used in the commission of the 99-19-401(2) offense was initially obtained in the course of the commission of the crime(s) provided for in this section, see § 99-19-401.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Larceny.
3. Obtaining by false pretenses.
4. Embezzlement.
5. Possession of stolen property distinguished from larceny.
6. Intent.
7. Asportation.
8. Subjects of larceny.
9. Lost property.
10. Assisting thief.
11. Successive larcenies.
12. Indictment.
13. —Variance between indictment and proof.
14. Evidence.
15. —Sufficiency.
16. Inference from possession of stolen property.
17. Instructions, generally.
18. —Intent.
19. —Circumstantial evidence.
20. —Lesser included offense.
21. —Evidence of trespass.
22. —Possession of stolen property.
23. Verdict.
24. Sentence and punishment.
25. Miscellaneous.

1. In general.

Since the amendment to this section, that occurred between the time of the alleged larceny and trial did not specifically provide that the Legislature intended it to apply retroactively, under Miss. Code Ann. § 99-19-1, the trial court did not err in instructing the jury on the elements of grand larceny as they existed at the time the crime was committed. Walters v. State, 206 So. 3d 524, 2016 Miss. LEXIS 503 (Miss. 2016).

Evidence was sufficient to support a conviction because the value of a bicycle met the monetary requirement for grand larceny under this statute; the owner of the bicycle testified that it retailed for $6,000 to $6,500, and the bicycle was listed for sale at $4,000 after defendant pawned it. Goldsmith v. State, — So. 3d —, 2016 Miss. App. LEXIS 2 (Miss. Ct. App. Jan. 5, 2016), op. withdrawn, sub.

op., 195 So. 3d 207, 2016 Miss. App. LEXIS 303 (Miss. Ct. App. 2016).

Evidence was sufficient to support defendant's conviction for grand larceny, pursuant to Miss. Code Ann. § 97-17-41(1), because the jury could certainly infer from photographs and the owner's testimony that the vantaken by defendant was worth at least $ 500. Kirkwood v. State, 53 So. 3d 7, 2010 Miss. App. LEXIS 48 (Miss. Ct. App. 2010), aff'd, in part, rev'd, 52 So. 3d 1184, 2011 Miss. LEXIS 36 (Miss. 2011).

One who sells property of another in his possession, believing it to be his own, is not guilty of larceny. Pearson v. State, 248 Miss. 353, 158 So. 2d 710, 1963 Miss. LEXIS 401 (Miss. 1963).

Where the defendant borrowed a shotgun with the promise to return it the next morning, but did not return it and informed the prosecuting witness that the gun was lost and the defendant promised to buy a new one but never did so, the evidence was insufficient to sustain a conviction of larceny. Smith v. State, 214 Miss. 453, 59 So. 2d 74, 1952 Miss. LEXIS 489 (Miss. 1952).

In the absence of statutory modifications, it is essential to every larceny that there be a felonious or fraudulent taking, accompanied by the carrying away or asportation by one person of the personal goods of property of another which may be the subject of larceny and such taking must be without the consent and against the will of the owner involving a trespass to latter's possession or its equivalent, and with the felonious intent on the part of the taking existing at the time of the taking, to steal the same. Smith v. State, 214 Miss. 453, 59 So. 2d 74, 1952 Miss. LEXIS 489 (Miss. 1952); Simmons v. State, 208 Miss. 523, 44 So. 2d 857, 1950 Miss. LEXIS 269 (Miss. 1950).

Where hotel maid while cleaning guest's room found guest's wallet containing money under pillow and took it with her to her sister's home when she went off duty, jury was warranted in finding that the trespass, which is an essential element of the crime of larceny, was committed when the defendant concluded to take the property of the guest away from the hotel in disobedience of her instructions to report it either to the manager or the housekeeper. Harris v. State, 207 Miss. 241, 42 So. 2d 183, 1949 Miss. LEXIS 333 (Miss. 1949).

There is no offense where owner consents to conversion. Foster v. State, 123 Miss. 721, 86 So. 513, 1920 Miss. LEXIS 74 (Miss. 1920).

Selling property which the seller knows not to belong to him and appropriating the proceeds to his own use is not necessarily larceny, a felonious taking is necessary. Watkins v. State, 60 Miss. 323, 1882 Miss. LEXIS 55 (Miss. 1882).

2. Larceny.

Statute can be interpreted as consistent with prior caselaw if "the offense" is understood to mean one design or a continuous transaction. Nations v. State, 199 So. 3d 1265, 2016 Miss. App. LEXIS 538 (Miss. Ct. App. 2016).

Trial court properly permitted the State to aggregate several alleged petit larcenies to establish one grand larceny because there was sufficient evidence that defendant took the victim's jewelry as part of one design; defendant herself claimed that the victim gave her all of the jewelry in a three-day period, and she worked for the victim for less than three months. Nations v. State, 199 So. 3d 1265, 2016 Miss. App. LEXIS 538 (Miss. Ct. App. 2016).

Where an employee alleged that the employee was terminated in retaliation for reporting larceny and federal income tax evasion regarding tip pool distribution at a casino, the McArn exception to the employment-at-will doctrine did not apply, because the employee did not demonstrate that the activities the employee complained of warranted the imposition of criminal penalties, as opposed to mere civil penalties. Kyle v. Circus Circus Miss., Inc., 2010 U.S. Dist. LEXIS 59050 (N.D. Miss. June 15, 2010), aff'd, 430 Fed. Appx. 247, 2011 U.S. App. LEXIS 8834 (5th Cir. Miss. 2011).

Under state's evidence showing that the defendant was present, aiding, abetting and participating in the theft of a combine, he should have been charged with grand larceny, and his conviction of receiving stolen property was improper, requiring reversal. Hentz v. State, 489 So. 2d 1386, 1986 Miss. LEXIS 2468 (Miss. 1986).

When a person, even an agent of the owner, takes possession of property with the unlawful intent to feloniously convert the property to his own use at the time he acquires possession, he is guilty of larceny and not embezzlement. Mahfouz v. State, 303 So. 2d 461, 1974 Miss. LEXIS 1438 (Miss. 1974).

In a prosecution for the theft of certain cattle, defendant's co-indictee, the cattle manager and employee of the partnership owning the cattle who could only make sales for partnership upon authorization of one of the partners, was a mere caretaker with custody of the property, and the offense charged was grand larceny as contrasted with embezzlement. Mills v. State, 231 Miss. 641, 97 So. 2d 386, 1957 Miss. LEXIS 548 (Miss. 1957).

Where the possession of personal property is fraudulently obtained, there being no intention on the part of the owner that ownership or legal title should thereby pass, and the person who obtained possession intends to deprive the owner of the property, and in pursuance of such intent does deprive the owner thereof, the offense is larceny. Conn v. State, 228 Miss. 833, 89 So. 2d 840, 1956 Miss. LEXIS 572 (Miss. 1956).

A servant or employee who feloniously appropriates to his own use property of his master or employer to which he has access only by reason of mere physical propinquity as an incident of his employment, and not be reason of any charge or oversight over the property entrusted to him, commits the offense of larceny. Jackson v. State, 211 Miss. 828, 52 So. 2d 914, 1951 Miss. LEXIS 414 (Miss. 1951).

Larceny is the taking and carrying away from any place, at any time, of the personal property of another without his consent, by a person not entitled to possession thereof, feloniously with the intent to deprive the owner of his property permanently and to convert it to the use of the taker or of some person other than the owner. Jackson v. State, 211 Miss. 828, 52 So. 2d 914, 1951 Miss. LEXIS 414 (Miss. 1951); Crouse v. State, 229 Miss. 15, 89 So. 2d 919, 1956 Miss. LEXIS 581 (Miss. 1956).

Obtaining and keeping of money under practice known as "pigeon-dropping", victim delivering money of his own to pretended finder of large sum to establish right to participate in division of money found, constitutes crime of grand larceny instead of obtaining money under false pretenses. Garvin v. State, 207 Miss. 751, 43 So. 2d 209, 1949 Miss. LEXIS 386 (Miss. 1949).

The crime of grand larceny was complete where defendant and others induced the complaining witness to part with $1,500 for the purpose of changing it into bills of larger denominations by a chemical process, upon the promise to return the identical money used together with a sum of money as a profit for its use, and upon receiving such money defendant disappeared with it, as against the contention that the complaining witness's money was taken in his presence and with his consent and therefore there was no larceny. Ware v. State, 186 Miss. 533, 191 So. 678, 1939 Miss. LEXIS 272 (Miss. 1939).

One who unlawfully takes another's personal property not intending to steal, but who afterward converts it to his own use intending to steal, is guilty of larceny. If the original taking were lawful the rule is different. Beatty v. State, 61 Miss. 18, 1883 Miss. LEXIS 63 (Miss. 1883).

But if a person by fraudulent means obtains possession of goods even with the owner's consent with the felonious intent to deprive the owner of them and do in fact deprive him of his property, it is larceny. Watson v. State, 36 Miss. 593, 1859 Miss. LEXIS 72 (Miss. 1859).

3. Obtaining by false pretenses.

If possession of property is obtained by fraud and the owner intends to part with his title as well as his possession, the crime is that of obtaining property by false pretenses, provided the means by which it is acquired comply therewith, but the possession of property if fraudulently obtained with present intent on the part of the person obtaining it to convert the property to his own use, and the owner intends to part with possession merely and not with the title, the offense is larceny. Wilkinson v. State, 215 Miss. 327, 60 So. 2d 786, 1952 Miss. LEXIS 569 (Miss. 1952).

When personal property is fraudulently obtained under such circumstances that owner intends that no title shall pass, offense is grand larceny, but when he intends that ownership or legal title shall pass the offense is that of obtaining money under false pretenses. Garvin v. State, 207 Miss. 751, 43 So. 2d 209, 1949 Miss. LEXIS 386 (Miss. 1949).

4. Embezzlement.

State failed to prove the elements of embezzlement in violation of Miss. Code Ann. § 97-23-19 beyond a reasonable doubt and thus the trial court erred in denying defendant's motion for a directed verdict; in order to prove embezzlement, the State had to provide evidence of the following: (1) a company owned the car in question, (2) the car was lawfully entrusted to defendant, and (3) defendant wrongfully converted the vehicle to his own use, and while the State established car ownership by the company given the vehicle identification number, the State did not prove that defendant was entrusted with the vehicle, given that (1) defendant did not have permission to take company vehicle off the lot just by being an employee of the company, (2) the car belonged to a different location where defendant was never employed, and (3) defendant did not possess a valid driver's license, which prohibited him from lawfully driving company vehicles as part of his job. At best, the evidence might have shown the actual theft of property, but it did not prove embezzlement, and the court reversed and rendered. Luckett v. State, 989 So. 2d 995, 2008 Miss. App. LEXIS 527 (Miss. Ct. App. 2008).

Embezzlement is the wrongful appropriation or conversion of property where the original taking was lawful, or with the consent of the owner, while in larceny the taking involves a trespass, and a felonious intent must exist at the time of such taking. Jackson v. State, 211 Miss. 828, 52 So. 2d 914, 1951 Miss. LEXIS 414 (Miss. 1951).

5. Possession of stolen property distinguished from larceny.

One who receives stolen car from thief, knowing it was stolen, and after assuring thief that if he would steal and bring him a good car defendant would receive and pay for it, is not guilty of larceny but of receiving stolen goods. Harper v. State, 207 Miss. 733, 43 So. 2d 183, 1949 Miss. LEXIS 383 (Miss. 1949).

6. Intent.

Defendant's taking of a tiller from the hardware store without paying for it and his delivering the tiller to his father for one-hundred dollars was proof that defendant had the intent to permanently deprive the owner of the property. Berry v. State, 754 So. 2d 539, 1999 Miss. App. LEXIS 694 (Miss. Ct. App. 1999).

In a prosecution for grand larceny arising from the erroneous issuance of a $13,860 check to the defendant, the defendant's wrongful possession occurred when the corporation that issued the check realized the error and made demand for the property, and the requisite intent to wrongfully keep the property developed at that time since the defendant did not thereafter return it. State v. Smith, 652 So. 2d 1126, 1995 Miss. LEXIS 143 (Miss. 1995).

The specific intent to deprive the owner of his property wholly and permanently is a necessary ingredient of larceny; the taking of property with the intention of using it temporarily and with no intention of depriving its owner permanently is not larceny. Slay v. State, 241 So. 2d 362, 1970 Miss. LEXIS 1337 (Miss. 1970).

Where the defendant admitted the wrongful taking of an automobile from a motor company lot, but claimed that he intended only to drive it around that night and then return it, and it was shown that he drove it only within the city limits even after he was given a ticket for driving without a license and tag, such evidence precluded a conviction of grand larceny, but rather indicated an act of trespass less than larceny, since it did not appear that the defendant intended to deprive the owner permanently. Slay v. State, 241 So. 2d 362, 1970 Miss. LEXIS 1337 (Miss. 1970).

Felonious intent is not negatived by abandonment of property when the owner appeared and made no attempt to repossess it after he left. Mapp v. State, 248

Miss. 898, 162 So. 2d 642, 1964 Miss. LEXIS 320 (Miss. 1964).

Larcenous taking must be animo furandi, that is, there must be intent permanently to deprive owner of his property. Hubbard v. State, 41 So. 2d 1 (Miss. 1949).

7. Asportation.

Removal from one part of the owner's premises to another is a sufficient asportation. Mapp v. State, 248 Miss. 898, 162 So. 2d 642, 1964 Miss. LEXIS 320 (Miss. 1964).

An asportation or carrying away of the property is an essential element of the crime. A bare removal from the place where the goods are found is sufficient. Alexander v. State, 60 Miss. 953, 1883 Miss. LEXIS 45 (Miss. 1883); Williams v. State, 63 Miss. 58, 1885 Miss. LEXIS 13 (Miss. 1885).

8. Subjects of larceny.

Failure of owner's son-in-law and employee to return automobile with which he had been entrusted, constitutes embezzlement but not larceny. Peerless Ins. Co. v. St. Laurent, 247 Miss. 134, 154 So. 2d 135, 1963 Miss. LEXIS 286 (Miss. 1963).

Where two butane gas heaters were placed in the auditorium of the church and they were bolted or screwed on to the pipes which had been run under and through the floor and which carried gas, the gas heaters were not fixtures and defendant was properly indicted under this section [Code 1942, § 2240] instead of Code 1942, § 2246, which deals with larceny of fixtures. Garrett v. State, 213 Miss. 328, 56 So. 2d 809, 1952 Miss. LEXIS 370 (Miss. 1952).

Contraband liquor may be the subject of larceny. Passons v. State, 208 Miss. 545, 45 So. 2d 131, 1950 Miss. LEXIS 273 (Miss. 1950), overruled, Simmons v. State, 568 So. 2d 1192, 1990 Miss. LEXIS 605 (Miss. 1990).

A deed to land is the subject of larceny under Code 1892, §§ 1173, 1174, 1513. State v. Hughes, 80 Miss. 609, 31 So. 963, 1902 Miss. LEXIS 278 (Miss. 1902).

9. Lost property.

One who fraudulently claims an estray from the person taking it up for lost property from the finder may be convicted of larceny. Wilkinson v. State, 215 Miss. 327, 60 So. 2d 786, 1952 Miss. LEXIS 569 (Miss. 1952).

Where an accused urges employer to falsely represent to possessor of stray cattle that such cattle belong to the employer and to thereby obtain possession and sell such cattle and share the proceeds of the sale, he was properly prosecuted under the grand larceny statute. Wilkinson v. State, 215 Miss. 327, 60 So. 2d 786, 1952 Miss. LEXIS 569 (Miss. 1952).

One who falsely impersonates another and in such assumed character receives property intended for such other person, is guilty of larceny if he does so with the requisite felonious intent, provided the transaction does not involve the passing of title to the property from the owner to him. Wilkinson v. State, 215 Miss. 327, 60 So. 2d 786, 1952 Miss. LEXIS 569 (Miss. 1952).

A pressing shop employee who, finding a diamond bar pin lying loose in the bottom of a clothes basket, laid it aside in some place other than the desk in the office, and, the owner not having claimed it in two or three weeks, disposed of it to a pawnbroker, was not guilty of "larceny," it appearing that he had not relinquished the custody and control of the pin while it remained in the pressing shop, and it not being shown that he knew who was the owner of the pin or that he had any immediate means of ascertaining who the owner was with any reasonable degree of certainty. Calhoun v. State, 191 Miss. 82, 2 So. 2d 802, 1941 Miss. LEXIS 151 (Miss. 1941).

10. Assisting thief.

One who steals property, or who is accessory before fact to grand larceny cannot be convicted of receiving, concealing, or aiding in concealing, the property stolen. Thomas v. State, 205 Miss. 653, 39 So. 2d 272, 1949 Miss. LEXIS 456 (Miss. 1949).

One who drives his car to seed house door after midnight, assists in loading fertilizer in car after two other persons have unlocked door, entered seed house and brought fertilizer to door, and is actually present, aiding, abetting, and participating in theft of fertilizer, is a principal guilty of larceny and not of receiving stolen property. Thomas v. State, 205 Miss. 653, 39 So. 2d 272, 1949 Miss. LEXIS 456 (Miss. 1949).

One aiding and assisting thief in making away with property after knowledge that it is stolen guilty of "larceny." Devine v. State, 132 Miss. 492, 96 So. 696, 1923 Miss. LEXIS 76 (Miss. 1923).

11. Successive larcenies.

Defendant was not subjected to double jeopardy as while the two grand larceny offenses were committed closely in time and against the same victim, the record reflected that the offenses had occurred at different times, in different locations, and arose from separate acts. Hughery v. State, 915 So. 2d 457, 2005 Miss. App. LEXIS 265 (Miss. Ct. App.), cert. denied, 921 So. 2d 1279, 2005 Miss. LEXIS 779 (Miss. 2005).

Two entries into church, taking 2 heaters from church each time, which are for primary purpose of stealing 4 heaters, are single continuous transaction for purposes of grand larceny prosecution. Ellis v. State, 469 So. 2d 1256, 1985 Miss. LEXIS 2100 (Miss. 1985).

Evidence that the accused, charged with stealing 10 sacks of dairy feed at a total value of $35, took the feed, one sack at a time, from the owner's barn by wheelbarrow, and the transportation in this manner was a continuous, consecutive operation, was sufficient to sustain a grand larceny conviction as against the accused's contention that he could not be guilty of that crime since the proof showed, at most, that he took and carried away only one sack of feed at a time, worth only $3.50. Barnes v. State, 230 Miss. 299, 92 So. 2d 863, 1957 Miss. LEXIS 372 (Miss. 1957).

Several petty larcenies cannot be consolidated so as to constitute grand larceny, but where the several takings are one continuous transaction it constitutes grand larceny. Dodson v. State, 130 Miss. 137, 93 So. 579, 1922 Miss. LEXIS 191 (Miss. 1922).

Where this is one continual transaction, the thief may be convicted of the final carrying away although there may have been several distinct asportations, but where there are successive larcenies each complete and distinct and not constituting one continuing transaction, the mere retention and possession by the thief of the fruits of his petit larcenies do not make him guilty of grand larceny. Scarver v. State, 53 Miss. 407, 1876 Miss. LEXIS 88 (Miss. 1876).

There is no presumption that various articles found in defendant's possession were all stolen at one time. Scarver v. State, 53 Miss. 407, 1876 Miss. LEXIS 88 (Miss. 1876).

12. Indictment.

Trial court properly amended the State's motion to amend the indictment to strike items identified as having been stolen and to change the description of other items because the deleted items were mere surplusage; the removal of the items did not change the substance of the offense, defendant was afforded a fair opportunity to defend herself and was not unfairly surprised, the amendment clarified and narrowed the essential facts, and the deletion of the items did not eliminate any defense. Nations v. State, 199 So. 3d 1265, 2016 Miss. App. LEXIS 538 (Miss. Ct. App. 2016).

Trial court properly amended the State's motion to amend the indictment to change "diamond ring with diamond clusters" to read simply "diamond ring" because defendant did not explain how the slight alteration of the description of the ring was material or prejudicial. Nations v. State, 199 So. 3d 1265, 2016 Miss. App. LEXIS 538 (Miss. Ct. App. 2016).

Where the inmate asserted that the sentence on the charge of grand larceny under Miss. Code Ann. § 97-17-41 was illegal because no indictment on that charge was ever returned before the inmate pled guilty to it, the claim failed, as the inmate waived the right to an indictment in writing and in open court. Bataya v. State, 861 So. 2d 364, 2003 Miss. App. LEXIS 1201 (Miss. Ct. App. 2003).

An indictment charging grand larceny for the removal of flowers from a grave was not fatally flawed even if it incorrectly named the owner of the flowers where the indictment specified the date of the theft, the property taken, and the location from which it was taken, and was therefore sufficient to put the defendants on notice of the crime charged and to prevent subsequent prosecution for the same incident. Cooper v. State, 639 So. 2d 1320, 1994 Miss. LEXIS 313 (Miss. 1994).

A defendant convicted of a single charge of grand larceny could not successfully complain because he had been charged in a multi-count indictment which in addition to the grand larceny charge also charged him with conspiracy to commit grand larceny, and a further charge that he was a recidivist in that he had previously been convicted of four separate felonies. Perkins v. State, 487 So. 2d 791, 1986 Miss. LEXIS 2389 (Miss. 1986).

An indictment charging the theft of 34 bundles of roofing of the total value of $103.70 is not vague or indefinite. Murray v. State, 266 So. 2d 139, 1972 Miss. LEXIS 1388 (Miss. 1972), cert. denied, 411 U.S. 907, 93 S. Ct. 1534, 36 L. Ed. 2d 196, 1973 U.S. LEXIS 2937 (U.S. 1973).

An indictment incorrectly charging that the grand larceny was committed on November 14, 1968, while the evidence showed that it was actually committed on August 16, was not insufficient where the defendant was not surprised or prejudiced by testimony that the offense occurred on August 16, and in fact offered testimony of alibi for both dates. Deaton v. State, 242 So. 2d 452, 1970 Miss. LEXIS 1385 (Miss. 1970).

An indictment under this section [Code 1942, § 2240] must allege the value of the property charged to have been stolen. Pearson v. State, 248 Miss. 353, 158 So. 2d 710, 1963 Miss. LEXIS 401 (Miss. 1963).

Where accused had allegedly stolen property in another state and transported it into Mississippi, the indictment must aver the larceny took place in the county where accused is found possessing it, if he is to be tried there. Coggins v. State, 234 Miss. 369, 106 So. 2d 388, 1958 Miss. LEXIS 505 (Miss. 1958).

An indictment charging that the accused stole 10 sacks of dairy seed of the value of $3.50 each, the total value of $35, the personal property of another, was sufficient, without specifying the different types of grain, or other elements, and a percentage of each, composing the dairy feed. Barnes v. State, 230 Miss. 299, 92 So. 2d 863, 1957 Miss. LEXIS 372 (Miss. 1957).

An indictment for grand larceny containing an incongruous description of the cow allegedly stolen if defective should have been availed of by demurrer and such defect could not be raised for first time on appeal. Clark v. State, 39 So. 2d 783 (Miss. 1949).

An indictment for larceny should describe the property alleged to have been taken with reasonable certainty, so that the description will enable the court to determine that the property in question is the subject of larceny, show the jury that such property is that upon which the indictment is founded, reasonably inform the accused of the instance meant in conformity with the constitutional guaranty in that respect so that he may properly prepare his defense, and be such that the judgment rendered after trial upon the indictment may be pleaded in bar of a subsequent prosecution for the same offense. Rutherford v. State, 196 Miss. 321, 17 So. 2d 803, 1944 Miss. LEXIS 195 (Miss. 1944).

While Code 1942, § 2459 provides the exception as to descriptions of property in indictments for larceny by allowing the same to be described in general terms where the charge is for larceny of money or evidences of debt, the chapter on criminal procedure does not otherwise abrogate the common-law rule requiring the description of personal property in an indictment for larceny to be reasonably definite and certain. Rutherford v. State, 196 Miss. 321, 17 So. 2d 803, 1944 Miss. LEXIS 195 (Miss. 1944).

Indictment in grand larceny prosecution charging defendant with theft of "a quantity of clover seed," of the value of "more than $25 in lawful money," was so vague, uncertain and indefinite as to give defendant no intimation regarding amount of clover seed which he was accused of stealing and was subject to demurrer. Rutherford v. State, 196 Miss. 321, 17 So. 2d 803, 1944 Miss. LEXIS 195 (Miss. 1944).

An indictment charging the defendants with the theft of three suits of clothes, but separately stating each suit and its respective value of $15 without charging the total amount, was not objectionable as failing to charge a felony, since necessarily the taking and stealing of separate suits of the separate value of $15 each aggregated $45 and constituted grand larceny. Harvey v. State, 188 Miss. 428, 194 So. 925, 1940 Miss. LEXIS 36 (Miss. 1940).

If the indictment charge that the accused stole "a mule," it will not be bad because it does not aver that the mule was "personal" property. Jones v. State, 51 Miss. 718, 1875 Miss. LEXIS 98 (Miss. 1875).

Where chattels are stolen in one county and carried into another, the indictment in the latter should charge the larceny to have been committed there. Johnson v. State, 47 Miss. 671, 1873 Miss. LEXIS 20 (Miss. 1873).

13. —Variance between indictment and proof.

Case remanded for sentencing on grand larceny where the State failed to prove every element of the indictment for robbery, but did prove all the elements of the lesser-included offense of grand larceny. Clayton v. State, 759 So. 2d 1169, 1999 Miss. LEXIS 381 (Miss. 1999).

In a prosecution for grand larceny, where the testimony showed that a common carrier had the property involved in its possession for transportation from consignors to consignees who were the owners of the property, the freight line was a common carrier bailee in rightful possession of the property and there was no fatal variance between the proof and the indictment charging that the articles of personal property alleged to have been stolen were the property of the common carrier. Mahfouz v. State, 303 So. 2d 461, 1974 Miss. LEXIS 1438 (Miss. 1974).

Variance between allegation of indictment that animal allegedly stolen was "white," whereas proof showed it was white with small yellow and brown spots was held not a material variation especially in view of testimony that the yearling was of a breed known as "white cattle." Clark v. State, 39 So. 2d 783 (Miss. 1949).

14. Evidence.

In a case where defendant was convicted of several crimes relating to the arson and burglary of a residence, his double jeopardy rights were not violated due to the fact that some of the elements of the crimes overlapped; each of the crimes involved required proof of an additional fact that the other did not. McCollins v. State, 952 So. 2d 305, 2007 Miss. App. LEXIS 167 (Miss. Ct. App. 2007).

Evidence was competent to sustain a grand larceny conviction where the State proved that the value of the stolen desk was more than $250 where the item was purchased for substantially more than $250; since the property in question tended not to decline in value, the fact that the victim's husband paid more than $250 was credible evidence that would support a grand larceny conviction. Thompson v. State, 910 So. 2d 60, 2005 Miss. App. LEXIS 31 (Miss. Ct. App. 2005).

From testimony presented, there was sufficient evidence for the jury to resolve any conflicts in favor of the State and find defendant guilty of grand larceny; the owner of the stolen carburetor testified that it was worth at least $1000 and that he had to buy a used carburetor for $400 to replace the stolen one. Nelson v. State, 839 So. 2d 584, 2003 Miss. App. LEXIS 148 (Miss. Ct. App. 2003).

An unlawful taking may be established by circumstantial evidence, such as subsequent conduct. Pearson v. State, 248 Miss. 353, 158 So. 2d 710, 1963 Miss. LEXIS 401 (Miss. 1963).

Whether defendant's explanation of how he came into possession of property charged to have been stolen sufficiently disproves an intent to steal, is for the jury, save where the evidence fails to establish such intent beyond a reasonable doubt. Pearson v. State, 248 Miss. 353, 158 So. 2d 710, 1963 Miss. LEXIS 401 (Miss. 1963).

In a grand larceny prosecution, admission of testimony of a witness, who had been indicted for receiving property involved in the theft, which was not contradicted, was not improbable, and was reasonable, was not error, even though the witness testified that he had an agreement with the state that if he told the truth the charges against him would be dropped. Hoke v. State, 232 Miss. 329, 98

So. 2d 886, 1957 Miss. LEXIS 479 (Miss. 1957).

Where the sheriff, in testifying, had attributed to the accused statements which were admissions of fact pertinent to the issue which, in connection with other facts, tended to prove accused's guilt, the trial court committed reversible error in refusing to permit the accused to either show by the sheriff that the accused had denied the crime or to show the entire statement, upon the ground that any explanation of the statement made by the accused to the sheriff would be self-serving. Davis v. State, 230 Miss. 183, 92 So. 2d 359, 1957 Miss. LEXIS 357 (Miss. 1957).

Although consisting of a mixed statement of fact and opinion, the admission of testimony of an expert, who made plaster casts of the tire tracks of the truck used in the larceny, as to distinguishing marks in the tracks and tire cast was not reversible error. Crouse v. State, 229 Miss. 15, 89 So. 2d 919, 1956 Miss. LEXIS 581 (Miss. 1956).

In prosecution for the crime of "pigeon dropping" which under this section [Code 1942, § 2240] is larceny, the trial court was not in error in permitting the state to reopen the case in order to more clearly prove the victim's ownership of the money which has been taken from her, where the defendant was offered opportunity to present any further testimony she might desire. Lewis v. State, 56 So. 2d 397 (Miss. 1952).

In prosecution for grand larceny, when every essential element except intent is shown by evidence, intent may be inferred from circumstances surrounding taking, i.e., that it occurred under cover of darkness and that after the asportation the property was concealed. Simmons v. State, 208 Miss. 523, 44 So. 2d 857, 1950 Miss. LEXIS 269 (Miss. 1950).

Where corpus delicti, in prosecution for larceny, is shown by preponderance of evidence, confession of defendant is admissible in evidence, and if confession coupled with proof of corpus delicti aliunde shows corpus delicti beyond reasonable doubt it is sufficient. Simmons v. State, 208 Miss. 523, 44 So. 2d 857, 1950 Miss. LEXIS 269 (Miss. 1950).

Testimony of the manager of a stock yard as to the price paid for a yearling was admissible where the price coincided with the price admittedly received for a stolen yearling. Davis v. State, 200 Miss. 514, 27 So. 2d 769, 1946 Miss. LEXIS 316 (Miss. 1946).

An agreement for the entry of a plea of guilty at a former term, which the evidence showed was induced by a promise of leniency, was incompetent as evidence against one accused of grand larceny. Elliott v. State, 185 Miss. 381, 189 So. 796, 1939 Miss. LEXIS 191 (Miss. 1939).

On trial of trustee for larceny in taking portion of mortgaged goods he may testify as to what authority he had for his alleged unlawful act. Guthrie v. State, 47 So. 639 (Miss. 1908).

Where defendant denied having stolen money and it was found on him, he will not be permitted to testify in explanation as to what he told others or they told him. Lohrey v. State, 91 Miss. 853, 45 So. 145, 1907 Miss. LEXIS 171 (Miss. 1907).

15. —Sufficiency.

Evidence supported defendant's conviction of grand larceny given that a ticket established that the scrap value of the metal scaffolding was over $ 700, the owner testified that the scaffolding belonged to him, the scaffolding had been scrapped for money and was melted down, thus depriving the owner of it, and defendant had been on the owner's land on a forklift moving things around and lied twice about his purpose for being there. Bailey v. State, 214 So. 3d 288, 2016 Miss. App. LEXIS 781 (Miss. Ct. App. 2016).

Evidence was sufficient to establish that the value of a stolen bicycle met the monetary requirement for grand larceny because the victim testified that the bicycle retailed for $ 6,000 to $ 6,500 and that he paid $ 3,200 for the bicycle, and a pawn shop employee testified that the bicycle retailed for $7,000. Goldsmith v. State, 195 So. 3d 207, 2016 Miss. App. LEXIS 303 (Miss. Ct. App.), cert. dismissed, 203 So. 3d 600, 2016 Miss. LEXIS 412 (Miss. 2016).

Trial court did not err in denying defendant's motions for a directed verdict, judgment notwithstanding the verdict, or new trial because there was sufficient evidence for the jury to find defendant guilty of grand larceny; the evidence showed that defendant was in possession of the bicycle the same morning it was stolen, and his explanation as to how he gained possession was demonstrably false. Goldsmith v. State, 195 So. 3d 207, 2016 Miss. App. LEXIS 303 (Miss. Ct. App.), cert. dismissed, 203 So. 3d 600, 2016 Miss. LEXIS 412 (Miss. 2016).

Testimony from the victim that she purchased the boat 14 years earlier for $4,500, that a low estimate for current value of the boat was $950 and for the trailer was $200, as well as her testimony that the boat and trailer were in working condition at the time they were stolen, was sufficient for a jury to find beyond a reasonable doubt the elements of grand larceny, including that the value of the stolen items was $1,000 or more. Gray v. State, 169 So. 3d 982, 2015 Miss. App. LEXIS 380 (Miss. Ct. App. 2015).

Evidence was sufficient to sustain defendant's grand larceny conviction where the jury was correctly instructed regarding market value, and the evidence showed that the purchase price of the stolen items was at least $1,860. Totten v. State, 166 So. 3d 32, 2015 Miss. LEXIS 124 (Miss.), cert. denied, 577 U.S. 932, 136 S. Ct. 355, 193 L. Ed. 2d 245, 2015 U.S. LEXIS 6595 (U.S. 2015).

Sufficient evidence supported defendant's attempted grand larceny conviction because defendant ran from the victim's van stolen in the same manner as the attempt to steal the crime's subject. Drummer v. State, 167 So. 3d 1222, 2014 Miss. App. LEXIS 379 (Miss. Ct. App. 2014), aff'd in part and rev'd in part, 167 So. 3d 1180, 2015 Miss. LEXIS 349 (Miss. 2015).

Defendant's conviction for grand larceny was appropriate because an eyewitness testified that he had seen defendant remove the bag of tools from the victim's trunk and carry them away; another eyewitness picked defendant out of a photo line up with no hesitation; two officers testified that defendant was carrying the black and gold bag of tools when approached on the street; and the evidence was sufficient for a reasonable juror to have found that the value of the stolen tools was more than $500. Gunn v. State, 56 So. 3d 568, 2011 Miss. LEXIS 61 (Miss. 2011).

Defendant's conviction for grand larceny in violation of Miss. Code Ann. § 97-17-41(1)(a) was appropriate because one of the victims testified that one seven-piece socket set cost $150. Based on the victim's testimony regarding the rest of the stolen items, a jury could have reasonably inferred that the rest of the tools had a fair market value greater than $ 100, for a total over $ 250. Williams v. State, 994 So. 2d 821, 2008 Miss. App. LEXIS 234 (Miss. Ct. App.), cert. denied, 998 So. 2d 1010, 2008 Miss. LEXIS 642 (Miss. 2008).

Evidence was sufficient to support a grand larceny conviction where defendant was found in possession of the truck only six days after it was stolen without a credible explanation as to why he had possession, and he was seen several hundred yards away from the business where the truck was kept the night before it was taken. Presley v. State, 994 So. 2d 191, 2008 Miss. App. LEXIS 164 (Miss. Ct. App.), cert. denied, 998 So. 2d 1010, 2008 Miss. LEXIS 652 (Miss. 2008).

In a grand larceny case, the evidence was legally sufficient to support a conviction based on the testimony of the witnesses that defendant was the person that stole property and ran from police; moreover, defendant was near the abandoned stolen property with fresh mud on his shoes and no credentials to be where he was. Easterling v. State, 963 So. 2d 49, 2007 Miss. App. LEXIS 528 (Miss. Ct. App. 2007).

Defendant's conviction for grand larceny in violation of Miss. Code Ann. § 97-17-41 was reversed; the fact that defendant had asked the victim for money and then later had over $600 to buy a keyboard was insufficient to prove that defendant stole the victim's money from his car, especially where the victim had left the money in his car for several hours with the car doors unlocked and the car windows rolled down. Hobbs v. State, 949 So. 2d 758, 2006 Miss. App. LEXIS 248 (Miss. Ct. App. 2006).

Victim's father testified that he had paid between $ 3,000 and $ 4,000 for the truck rims; although this was not direct testimony as to the value of the rims, it circumstantially provided a basis for the jury to infer that the rims were worth at least $ 250; defendant's conviction for attempt to commit grand larceny was therefore appropriate and the trial court did not err in denying defendant's motion for judgment notwithstanding the verdict, or in the alternative, a new trial. Smith v. State, 881 So. 2d 908, 2004 Miss. App. LEXIS 401 (Miss. Ct. App. 2004).

State's theory of the case was that defendant and the driver of the car that pulled into the victim's driveway had engaged in a prior conspiracy to steal the victim's truck rims, but there was no evidence of a "union of the minds" of defendant and the driver because the evidence showed that (1) when the car pulled into the driveway, defendant ran and hid behind the house and, clearly, if the two parties had been acting in concert, defendant would have recognized his co-conspirator and not hid; (2) defendant left on foot and not in the car, even though the car was still in the driveway; and (3) although the rims were removed from the truck, defendant made no attempt to put them into the car that was in the driveway; thus, although the appearance of the car in the victim's driveway was somewhat puzzling, a finding that its appearance was due to the furtherance of a conspiracy to steal the rims off of the truck would be an impermissible stretch. Therefore, the evidence was insufficient to support defendant's conviction for conspiracy to commit grand larceny. Smith v. State, 881 So. 2d 908, 2004 Miss. App. LEXIS 401 (Miss. Ct. App. 2004).

Evidence was sufficient to convict defendant where defendant's explanation for having the stolen tank was neither reasonable nor credible, especially given that his passenger, whom he claimed was helping, was highly intoxicated at the time of the stop. Ray v. State, 864 So. 2d 1031, 2004 Miss. App. LEXIS 74 (Miss. Ct. App. 2004).

Circumstantial evidence that defendant was one of only three people who knew that his mother kept a locked safe in her home and the combination to the safe, that someone used the combination to open the safe and steal cash and other items, that defendant had been in the house while his mother was on an overnight trip, and that defendant had gambled at a riverboat casino on the night of the theft despite not having worked in approximately one month, excluded every reasonable hypothesis except that defendant had committed the theft; evidence was therefore sufficient to support conviction. Cates v. State, 823 So. 2d 1229, 2002 Miss. App. LEXIS 452 (Miss. Ct. App. 2002).

Where the jury was properly instructed as to the elements of burglary and grand larceny and the prosecutor did not elicit testimony specific to the statutory elements of burglary, the jury's verdict to acquit on the burglary charge and convict on the grand larceny charge was supported by the evidence. Allen v. State, 755 So. 2d 47, 1999 Miss. App. LEXIS 697 (Miss. Ct. App. 1999).

Evidence was sufficient to establish that the value of the property taken by the defendant was at least $250 and, therefore, to sustain his conviction for grand larceny where the least value of the amount of money contained in the victim's purse found in the record was $342, the amount which a deputy sheriff testified that the victim told him when he went to her home in response to her telephone call to the police and where the court's analysis of the victim's testimony indicated that her estimate that $400 in cash was in her billfold before she paid for the propane gas was consistent with her description of the bills she paid before she returned home with the defendant. Millender v. State, 734 So. 2d 225, 1999 Miss. App. LEXIS 18 (Miss. Ct. App. 1999).

Testimony of deputy sheriff and member of church that heaters stolen from church were worth about $150-$200 each, which evidence is contradicted by by defense testimony that heaters were worth only $35-$40 each, is sufficient for jury to find that value of items allegedly stolen was in excess of $100. Ellis v. State, 469 So. 2d 1256, 1985 Miss. LEXIS 2100 (Miss. 1985).

In a prosecution for larceny arising out of a "pigeon dropping" scheme, the evidence was sufficient to uphold the verdict where the victim positively identified the defendant and where the defendant's alibi witnesses had not actually seen the defendant during the morning of the crime but had only allegedly spoken to her over the telephone. Baker v. State, 396 So. 2d 1021, 1981 Miss. LEXIS 1969 (Miss. 1981).

Testimony of the owner of 200 stolen quail and of an accomplice of the defendant was sufficient to establish the value of the quail at $1 each, or a total value in excess of the necessary $100 to constitute grand larceny. Deaton v. State, 242 So. 2d 452, 1970 Miss. LEXIS 1385 (Miss. 1970).

Evidence held to support conviction of larceny of hog by person not able to give satisfactory account of its possession. Wilson v. State, 237 Miss. 294, 114 So. 2d 677, 1959 Miss. LEXIS 468 (Miss. 1959).

In a prosecution for larceny of property in another state and brought into Mississippi, conviction was supported by evidence that accused was in the apartment where the property was located at time the owner left for work, and when the owner returned neither accused nor property was there, possession of the property by accused two days later hundreds of miles away, together with accused's explanation of the admitted taking of the property, which explanation was neither reasonable nor credible. Coggins v. State, 234 Miss. 369, 106 So. 2d 388, 1958 Miss. LEXIS 505 (Miss. 1958).

A conviction for grand larceny resting largely upon the testimony of an alleged accomplice, which was without substantial corroboration, was against the overwhelming weight of the evidence where the defendant's evidence included the court records of a justice of the peace court showing that the defendant, at about the time the crime was committed, had been arrested for speeding and reckless driving at a place approximately 140 miles from the scene. Boyce v. State, 231 Miss. 847, 97 So. 2d 222, 1957 Miss. LEXIS 572 (Miss. 1957).

Where testimony by the sheriff and the owner of the stolen property about the finding of the stolen property upon defendant's premises was incompetent because the search was made without warrant, evidence as to the tracks left at the scene of the theft and their comparison with the tracks made by defendant's truck was insufficient to sustain conviction, especially in view of testimony by defendant and his wife that defendant's son had borrowed the truck on the night of the theft, and that defendant had nothing to do with or knowledge of, the theft. Holder v. State, 230 Miss. 792, 93 So. 2d 841, 1957 Miss. LEXIS 423 (Miss. 1957).

Testimony of dairy feed owner, who was experienced with dairy feed and its component parts, that he was owner of the ingredients that went into the finished product, detailing the nature, percentages and values of the different ingredients, and that the value of the 10 sacks of feed, which the accused was charged with stealing, was $35 was sufficient to show that the value of the stolen property was worth as much as $25. Barnes v. State, 230 Miss. 299, 92 So. 2d 863, 1957 Miss. LEXIS 372 (Miss. 1957).

Circumstantial evidence which gave rise to a number of reasonable hypotheses as to what might have become of the prosecuting witness's billfold, other than the accused taking it, was not sufficient to sustain the accused's conviction of grand larceny. Williamson v. State, 229 Miss. 305, 90 So. 2d 657, 1956 Miss. LEXIS 610 (Miss. 1956).

In prosecution for grand larceny where evidence showed that the accused received money for the purpose of changing it into bills of larger denomination by a chemical process, after which he was to return the identical money used together with a sum of money as a profit for its use and accused did not return the money, there was guilt of grand larceny effected by fraud. Jones v. State, 223 Miss. 812, 79 So. 2d 273, 1955 Miss. LEXIS 442 (Miss.), cert. denied, 350 U.S. 869, 76 S. Ct. 116, 100 L. Ed. 770, 1955 U.S. LEXIS 241 (U.S. 1955).

In a prosecution for larceny the state must prove ownership of stolen property as alleged in the indictment beyond a reasonable doubt. Bester v. State, 222 Miss. 706, 77 So. 2d 270, 1955 Miss. LEXIS 655 (Miss. 1955).

In grand larceny prosecution where the owner testifies that he had not given anyone permission to take property that was sufficient proof of lack of consent by owner to take the property. Brady v. State, 48 So. 2d 865 (Miss. 1950).

In grand larceny prosecution for stealing purse containing several $20 bills, undisputed evidence that defendant was in possession of a $20 bill positively identified as having been among the bills stolen, was sufficient to make out case for jury. Haney v. State, 199 Miss. 568, 24 So. 2d 778, 1946 Miss. LEXIS 225 (Miss. 1946).

Defendant did not, beyond a reasonable doubt, have felonious intent to steal so as to justify conviction of grand larceny, where, upon being directed by his mother to sell a cow to pay debts, defendant openly and in the daytime took the cow from the custody, and with the knowledge, of another in whose lot it was pastured, and subsequently in the daytime and in the presence of several witnesses, sold it to another who took bill of sale from defendant. Dillon v. State, 18 So. 2d 457, 1944 Miss. LEXIS 339 (Miss. 1944).

In prosecution for larceny of three yearlings and a cow, testimony held not to sustain conviction of grand larceny. Pitts v. State, 115 Miss. 189, 76 So. 140, 1917 Miss. LEXIS 195 (Miss. 1917).

In grand larceny taking of property of sufficient value to constitute the offense must be shown beyond all reasonable doubt. Francis v. State, 87 Miss. 493, 39 So. 897, 1905 Miss. LEXIS 147 (Miss. 1905).

Value must be proved or a conviction of grand larceny at least will be set aside. Stokes v. State, 58 Miss. 677, 1881 Miss. LEXIS 23 (Miss. 1881).

16. Inference from possession of stolen property.

Evidence that defendant possessed fruits of a burglary on the same day it occurred, and concealed the true origin of one of the stolen items, was sufficient to support his conviction of grand larceny in violation of Miss. Code Ann. § 97-17-41(1). Taylor v. State, 110 So. 3d 776, 2013 Miss. LEXIS 148 (Miss. 2013).

If the defendant's explanation as to how property which he is charged with stealing came into his possession is reasonable and credible, the burden is on the prosecution to prove its falsity; but if it is unreasonable or improbable, the burden of proving its truth is on the accused. Pearson v. State, 248 Miss. 353, 158 So. 2d 710, 1963 Miss. LEXIS 401 (Miss. 1963).

Inability to satisfactorily account for possession of stolen property warrants conviction of larceny. Wilson v. State, 237 Miss. 294, 114 So. 2d 677, 1959 Miss. LEXIS 468 (Miss. 1959).

Presumption of guilt of larceny arises from possession of stolen property only where the elapsed time was so short as to render it reasonably certain that there could have been no intermediate change of possession; and is not applicable where four years intervened between the stealing and the discovery of the property. Minor v. State, 234 Miss. 140, 106 So. 2d 41, 1958 Miss. LEXIS 475 (Miss. 1958).

The presumption is not one of law, but of fact, and cannot exist where accused's explanation of his possession is satisfactory, or at least raises a reasonable doubt of guilt. Minor v. State, 234 Miss. 140, 106 So. 2d 41, 1958 Miss. LEXIS 475 (Miss. 1958).

The possession of property recently stolen is a circumstance which may be considered by the jury and from which, in the absence of reasonable explanation, the jury may infer guilt of larceny; also the presumption as to the possession of stolen property unexplained includes the element of asportation. Hoke v. State, 232 Miss. 329, 98 So. 2d 886, 1957 Miss. LEXIS 479 (Miss. 1957).

Where there is any substantial dispute as to the possession of the stolen property by the accused, the better practice is to instruct that if the jury believes that the defendant was in possession of the property, which was recently stolen, such possession is a circumstance which may be considered and from which, in the absence of a reasonable explanation, the jury may infer guilt of larceny. Fogle v. State, 231 Miss. 746, 97 So. 2d 645, 1957 Miss. LEXIS 561 (Miss. 1957).

Presumption, if any, arising from recent possession of stolen truck, cannot be invoked in prosecution for grand larceny of truck when defendant's explanation of possession is reasonable. Hubbard v. State, 41 So. 2d 1 (Miss. 1949).

Possession of recently stolen truck by defendant in prosecution for grand larceny is reasonably explained by testimony that he accompanied his brother in truck to nearby town at invitation of brother and at request of brother returned truck to garage of owner, without any knowledge of how brother came into possession of truck, and explanation precludes invocation of presumption, if any, arising from recent possession of stolen truck. Hubbard v. State, 41 So. 2d 1 (Miss. 1949).

Presumption of guilt arises from possession of recently stolen property, provided that the proof is sufficient to establish that the money was in fact stolen, and that the accused failed to give a reasonable explanation of his possession of such property. Haney v. State, 199 Miss. 568, 24 So. 2d 778, 1946 Miss. LEXIS 225 (Miss. 1946).

Recent possession of stolen property raises a presumption of guilt, to be considered by the jury in connection with the reasonableness of the explanation of such possession. McDougal v. State, 199 Miss. 39, 23 So. 2d 920, 1945 Miss. LEXIS 268 (Miss. 1945).

Possession of an article must be recent, after it is missed, in order to impute guilt of larceny. Calhoun v. State, 191 Miss. 82, 2 So. 2d 802, 1941 Miss. LEXIS 151 (Miss. 1941).

While the recent possession of stolen property is a circumstance which may be considered and from which, in the absence of a reasonable explanation, the jury may infer guilt, yet the law does not raise a presumption of guilt from such possession and it is error to instruct that it does. Harper v. State, 71 Miss. 202, 13 So. 882, 1893 Miss. LEXIS 143 (Miss. 1893).

No definite length of time after loss of goods and before possession shown in accused seems to be settled as raising a presumption of guilt; the possession must however be recent and in such case if the party fail satisfactorily to account for his possession of stolen goods, the presumption which is one of fact will warrant his conviction of larceny. If a reasonable account be given, the state must show it to be false; if it be unreasonable, the accused must show its truth. Davis v. State, 50 Miss. 86, 1874 Miss. LEXIS 27 (Miss. 1874); Jones v. State, 51 Miss. 718, 1875 Miss. LEXIS 98 (Miss. 1875); Foster v. State, 52 Miss. 695, 1876 Miss. LEXIS 277 (Miss. 1876); Stokes v. State, 58 Miss. 677, 1881 Miss. LEXIS 23 (Miss. 1881); Matthews v. State, 61 Miss. 155, 1883 Miss. LEXIS 92 (Miss. 1883); Snowden v. State, 62 Miss. 100, 1884 Miss. LEXIS 27 (Miss. 1884).

17. Instructions, generally.

In a grand larceny prosecution, wherein the defendant was accused of stealing 530 gallons of insecticide of the value of $1,645.00, the trial court did not err in giving the state an instruction as to larceny only of a 55-gallon drum of insecticide of the value of $415.50. Hoke v. State, 232 Miss. 329, 98 So. 2d 886, 1957 Miss. LEXIS 479 (Miss. 1957).

In prosecution for grand larceny, modification, by insertion of words "as a gift," of instruction requested by defendants to effect that if victim gave money to defendant they would not be guilty of larceny is not error when it is shown that victim delivered money to defendant to establish his right to participate equally in a fund alleged to have been found, and evidence shows that all parties understood money was to be returned to victim with one-third of found sum. Garvin v. State, 207 Miss. 751, 43 So. 2d 209, 1949 Miss. LEXIS 386 (Miss. 1949).

Instructions in prosecution under indictment charging grand larceny of two young cows are not erroneous as charging separate larcenies, one for stealing blue heifer and another for stealing red heifer, or as referring jury to indictment for description of cattle charged to have been stolen, when one instruction referred to "a heifer or heifers as charged in the indictment" and another instruction referred to "the cows here in question", and when one heifer of value of $75 was identified as the property stolen, the value being more than $25, a case of grand larceny is shown. Kirby v. State, 206 Miss. 231, 39 So. 2d 770, 1949 Miss. LEXIS 256 (Miss. 1949).

Instruction in prosecution for grand larceny assuming disputed facts, that the property belongs to the prosecuting witness and that it was of the value of more than $25, was erroneous. Marble v. State, 195 Miss. 386, 15 So. 2d 693, 1943 Miss. LEXIS 169 (Miss. 1943).

Instruction omitting element of felonious or fraudulent taking, error. Dedeaux v. State, 125 Miss. 326, 87 So. 664, 1921 Miss. LEXIS 126 (Miss. 1921).

18. —Intent.

In a prosecution for grand larceny for theft of an automobile, the trial court did not err in failing to instruct the jury that a necessary element of the crime of grand larceny was that the defendant must have intended to permanently deprive the owner of his automobile, where the court instructed the jury that it should find the defendant guilty of grand larceny if he "did feloniously take, steal, and carry away the property," since the word "feloniously" means done with criminal intent. Deal v. State, 589 So. 2d 1257, 1991 Miss. LEXIS 800 (Miss. 1991).

19. —Circumstantial evidence.

Trial court did not abuse its discretion in denying defendant's proposed circumstantial-evidence jury instruction, as the case was not purely circumstantial, as witnesses testified to seeing defendant on the property on a forklift moving things around, the owner saw defendant there, and defendant also testified to being there. Bailey v. State, 214 So. 3d 288, 2016 Miss. App. LEXIS 781 (Miss. Ct. App. 2016).

Defendant was entitled to a circumstantial evidence instruction on charges of house burglary and grand larceny. Defendant's testimony that he tried to persuade friends not to commit the burglary and an officer's testimony that defendant was driving a stolen van in which stolen items were found was circumstantial, and no eyewitnesses were presented. Kirkwood v. State, 52 So. 3d 1184, 2011 Miss. LEXIS 36 (Miss. 2011).

In a prosecution for grand larceny for the theft of an automobile, the testimony of a highway patrol officer was sufficient to support the denial of a circumstantial evidence instruction, even though the statements were denied, where the officer testified that the defendant told him he had been driving the automobile in question, the defendant told the officer that his papers were in the glove compartment, the officer retrieved the papers and asked the defendant his name, the defendant responded that his name was on the papers, the officer made up a fictitious name and asked the defendant if that was his name, and the defendant responded affirmatively. Deal v. State, 589 So. 2d 1257, 1991 Miss. LEXIS 800 (Miss. 1991).

Where there was direct proof by the admission of the accused that he had shot the calf which he was accused of stealing and that he and his companion had butchered it and transported it to Louisiana, the case was not one of circumstantial evidence requiring inclusion in the instructions the phrase "beyond every other reasonable hypothesis." Burgess v. State, 245 Miss. 1, 145 So. 2d 160, 1962 Miss. LEXIS 525 (Miss. 1962).

In a prosecution for larceny in which guilty intent is an element and in which the defense was that accused was too drunk to know what what he was doing, it is error to charge that voluntary intoxication is no defense. Best v. State, 235 Miss. 318, 108 So. 2d 840, 1959 Miss. LEXIS 431 (Miss. 1959).

20. —Lesser included offense.

In a prosecution for grand larceny for theft of an automobile, the trial court correctly refused an instruction on the lesser included offense of trespass where the defendant did not claim that he was joyriding or that he was using the vehicle for a brief period and expected to return it, but rather, his defense was an alibi that he was not present when the automobile was stolen. Deal v. State, 589 So. 2d 1257, 1991 Miss. LEXIS 800 (Miss. 1991).

In a prosecution for grand larceny based on the taking of $750 from a cash drawer in a bank, the trial court did not err in denying the defendant's request for a jury instruction regarding the lesser included offense of petit larceny, even though no witness could testify to actually seeing more than $100 being taken. Ford v. State, 555 So. 2d 691, 1989 Miss. LEXIS 512 (Miss. 1989).

21. —Evidence of trespass.

The court properly refused the accused's tendered instruction that if the property allegedly stolen was shown to have been taken openly and in the presence of third persons, it would be only evidence of trespass, where there was no evidence that the property was taken openly in the presence of other persons. Crouse v. State, 229 Miss. 15, 89 So. 2d 919, 1956 Miss. LEXIS 581 (Miss. 1956).

Refusing to grant defendant's requested instructions in grand larceny prosecution that if the property alleged to have been stolen is shown to have been taken openly and in the presence of the owner or third persons then this carries with it only evidence of trespass was not error in view of the court's other instructions which cured the defect. Oakman v. State, 206 Miss. 136, 39 So. 2d 777, 1949 Miss. LEXIS 248 (Miss. 1949).

Where defense in prosecution for grand larceny against defendant who allegedly bought five cows and took six was his bona fide belief that he purchased the extra cow and there was no question that this animal was taken with an intent to retain and control it, failure of the court to instruct jury as to the alternative of criminal trespass was held not error. Oakman v. State, 206 Miss. 136, 39 So. 2d 777, 1949 Miss. LEXIS 248 (Miss. 1949).

Where the sum of $1500 was taken from the complaining witness clandestinely by means of a confidence game whereby the defendant and others represented that the complaining witness' money would be manufactured into bills of larger denominations, a requested instruction that if the money was openly taken in the presence of the owner, that of itself was only evidence of trespass, was properly refused. Holt v. State, 186 Miss. 727, 191 So. 673, 1939 Miss. LEXIS 270 (Miss. 1939).

22. —Possession of stolen property.

Evidence was sufficient to show that defendant committed the crime of grand larceny involving a bicycle because defendant was in possession of the bicycle the same morning it was stolen, and his explanation of how he gained possession was demonstrably false. Goldsmith v. State, — So. 3d —, 2016 Miss. App. LEXIS 2 (Miss. Ct. App. Jan. 5, 2016), op. withdrawn, sub. op., 195 So. 3d 207, 2016 Miss. App. LEXIS 303 (Miss. Ct. App. 2016).

Instruction in grand larceny prosecution that possession of recently stolen property was presumptive proof of defendant's guilt of larceny, and the burden of explaining or accounting for such possession was cast upon the defendant, and when satisfactory explanation was not given, the jury would be warranted in finding him guilty, constituted reversible error. Hall v. State, 279 So. 2d 915, 1973 Miss. LEXIS 1494 (Miss. 1973).

Where there is any substantial dispute as to the possession of the stolen property by the accused, the better practice is to instruct that if the jury believes from the evidence beyond every reasonable doubt that the defendant was in possession of the property and that such property was recently stolen, such possession is a circumstance which may be considered by the jury and from which, in the absence of a reasonable explanation, the jury may infer guilt of larceny. Fogle v. State, 231 Miss. 746, 97 So. 2d 645, 1957 Miss. LEXIS 561 (Miss. 1957).

Instruction that possession of property recently stolen is circumstance which may be considered by jury and from which, in absence of reasonable explanation, jury may infer guilt of larceny, is not error when proof shows that the property was stolen; that the property found in possession of accused was the stolen property; that possession was recently after the larceny and that accused's possession was personal, conscious, exclusive and unexplained by direct or circumstantial evidence which would rebut presumption of taking by accused. Lott v. State, 204 Miss. 610, 37 So. 2d 782, 1948 Miss. LEXIS 394 (Miss. 1948).

In grand larceny prosecution for stealing purse containing several $20 bills where undisputed evidence showed that defendant was in possession of a $20 bill positively identified as having been among the bills stolen, court erred in instructing jury that they could not find defendant guilty of a greater offense than that of petit larceny inasmuch as the testimony showed that not more than one $20 bill came into possession of defendant, since the jury was entitled to believe from all the circumstances that whoever stole the $20 bill also stole the remaining contents of the purse. Haney v. State, 199 Miss. 568, 24 So. 2d 778, 1946 Miss. LEXIS 225 (Miss. 1946).

23. Verdict.

Verdict finding defendant guilty as "accessory to the crime" was too vague, uncertain and indefinite to support a conviction of grand larceny, where the evidence pointed strongly to another who actually took the money, since it could not be ascertained whether the jury meant, by "accessory," that defendant was guilty as accessory before or after the larceny or that the defendant had received the money from another knowing it to have been stolen, and the defects of the verdict were not cured by statute pertaining to jeofails. McDougal v. State, 199 Miss. 39, 23 So. 2d 920, 1945 Miss. LEXIS 268 (Miss. 1945).

Where indictment charged grand larceny in second count, and jury was instructed to find accused not guilty of the first count, finding accused "guilty as charged in the second count in the indictment" not objectionable as failing to show crime defendant found guilty of. Lemon v. State, 95 Miss. 526, 49 So. 515, 1909 Miss. LEXIS 277 (Miss. 1909).

24. Sentence and punishment.

Circuit court properly sentenced defendant to 10 years in prison under the prior version of the grand larceny statute in effect at the time of the crime, as the statute required a trial court to sentence an offender under the sentencing statute in place at that time. Flowers v. State, 281 So. 3d 1103, 2019 Miss. App. LEXIS 253 (Miss. Ct. App. 2019).

Trial court properly sentenced defendant to ten years' imprisonment under the version of the statute in effect at the time of her crime because the statute required the trial court to sentence an offender under a sentencing statute in place at the time of the crime. Nations v. State, 199 So. 3d 1265, 2016 Miss. App. LEXIS 538 (Miss. Ct. App. 2016).

In a case in which defendant had been sentenced to 10 years of imprisonment as a habitual offender after violating Miss. Code Ann. § 97-23-93, defendant unsuccessfully argued that her sentence was unconstitutional as it exceeded the maximum sentence allowed by law. As she was a habitual offender, the circuit court was required under Miss. Code Ann. § 99-19-81 to impose the maximum sentence for grand larceny, which, under Miss. Code Ann. § 97-17-41, was 10 years and a fine of $ 10,000. Williams v. State, 24 So. 3d 360, 2009 Miss. App. LEXIS 940 (Miss. Ct. App. 2009).

Trial court did not err by imposing sentences of five years for conspiracy, 25 years for burglary of a dwelling, five years for grand larceny, and 20 years for first degree arson, as these were all the maximum sentences allowed for these crimes. McCollins v. State, 952 So. 2d 305, 2007 Miss. App. LEXIS 167 (Miss. Ct. App. 2007).

Appellate court affirmed defendant's conviction and the sentence imposed, as the trial court did not err by allowing the State to amend the indictment to correct the section number to reflect that defendant was being charged with felony shoplifting, and a five year sentence did not exceed the maximum punishment in Miss. Code Ann. § 97-17-41. Watson v. State, 939 So. 2d 806, 2006 Miss. App. LEXIS 121 (Miss. Ct. App.), cert. denied, 939 So. 2d 805, 2006 Miss. LEXIS 592 (Miss. 2006).

Where an inmate was sentenced for two counts of grand larceny and could have received a maximum sentence of ten years in the custody of Mississippi Department of Corrections, but instead, the trial court suspended five years of the ten year sentence, leaving five years of incarceration to serve, with two years of post-release supervision, the inmate's sentence was not illegal. Thus, the trial court properly denied the inmate's motion for post-conviction relief. Hill v. State, 912 So. 2d 494, 2005 Miss. App. LEXIS 726 (Miss. Ct. App. 2005).

Denial of the inmate's petition for post-conviction relief was proper where his argument that his grand larceny sentence was in excess of the five-year maximum allowed under law because he was not given credit for the five months he served should first be addressed to the Department of Corrections. In the event that he was denied credit for that time served, then he should seek redress in the courts. Gable v. State, 919 So. 2d 1075, 2005 Miss. App. LEXIS 461 (Miss. Ct. App. 2005).

Miss. Code Ann. § 97-17-41 does not provide a minimum sentence for grand larceny. Because the statute set no minimum penalty, the court was not obligated to inform defendant of the minimum sentence for grand larceny; hence, defendant's petition for postconviction relief was properly denied after defendant pled guilty to two counts of grand larceny and one count of possession of cocaine. Dockens v. State, 879 So. 2d 1072, 2004 Miss. App. LEXIS 770 (Miss. Ct. App. 2004).

Where an indictment for burglary, charged larceny not as a substantive offense but as demonstrative of burglarious intent, it was erroneous upon conviction to impose a separate sentence for larceny, and the sentence for larceny would be deleted as surplusage, without affecting the sentence for burglary. Bullock v. State, 222 So. 2d 692, 1969 Miss. LEXIS 1552 (Miss. 1969).

Where the record showed that the defendant was tried on an indictment charging grand larceny, the instructions of the court were on grand larceny, and the jury's verdict, finding defendant guilty as charged, was justified by the evidence, a statement appearing in the judgment of the court imposing sentence to the effect that defendant had been tried and found guilty on a charge of false pretenses was merely a clerical error, not requiring reversal. Jones v. State, 244 Miss. 596, 145 So. 2d 446, 1962 Miss. LEXIS 483 (Miss. 1962).

In prosecution for grand larceny, an order indefinitely postponing sentence after a plea of guilty did not result in loss of court's jurisdiction to impose sentence even after a period of five years, at least, in the absence of motion by defendant to be allowed to withdraw his plea of guilty. Crump v. Trapp, 210 Miss. 905, 36 So. 2d 459, 1948 Miss. LEXIS 215 (Miss. 1948).

25. Miscellaneous.

Convictions for both murder during course of armed robbery and grand larceny violated double jeopardy prohibition against multiple punishments for same offense, where robbery charge, which was used to elevate case to capital murder, encompassed elements of grand larceny. Holly v. State, 671 So. 2d 32, 1996 Miss. LEXIS 15 (Miss.), cert. denied, 518 U.S. 1025, 116 S. Ct. 2565, 135 L. Ed. 2d 1082, 1996 U.S. LEXIS 4179 (U.S. 1996).

In a prosecution for grand larceny, evidence that the defendant kept a $13,860 check erroneously issued and sent to him, and subsequently used it to pay off debts, raised a factual issue for the jury as to whether he had the requisite intent to wrongfully keep the money. State v. Smith, 652 So. 2d 1126, 1995 Miss. LEXIS 143 (Miss. 1995).

The trial court is not authorized or required to appoint counsel for a defendant accused of grand larceny, a noncapital felony. Fogle v. State, 231 Miss. 746, 97 So. 2d 645, 1957 Miss. LEXIS 561 (Miss. 1957).

The conflict in testimony as to whether an alleged confession, made by the accused charged with grand larceny, was free and voluntary, including the fact that the confession was made while the accused was under arrest and confined in jail without a warrant, were questions for decision by the trial judge on a preliminary hearing. Crouse v. State, 229 Miss. 15, 89 So. 2d 919, 1956 Miss. LEXIS 581 (Miss. 1956).

Where testimony of three alleged accomplices was sufficient to convict defendant of grand larceny of cattle, but on motion for new trial all three alleged accomplices repudiated their testimony after being advised by trial court of their right not to incriminate themselves by an admission of perjury and that they could be sent to the penitentiary if they should falsely repudiate their former testimony, such repudiation when considered in the light of testimony of an alibi and the good reputation of defendant as a law abiding citizen warranted reversal of conviction and remand for new trial. Gathings v. State, 46 So. 2d 800 (Miss. 1950); Quinn v. State, 46 So. 2d 802 (Miss. 1950).

Judgment in grand larceny prosecution merely stating that defendant was tried by twelve good and lawful men, without adjudicating that they composed a jury was not invalid where record showed accused was tried and convicted by a jury in judicial proceeding. Watts v. State, 209 Miss. 322, 46 So. 2d 789, 1950 Miss. LEXIS 391 (Miss. 1950).

Conviction of larceny under indictment for burglary, reversed. Fournier v. State, 96 Miss. 417, 50 So. 502, 1909 Miss. LEXIS 27 (Miss. 1909).

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Gambling or lottery paraphernalia as subject of larceny, burglary, or robbery. 51 A.L.R.2d 1396.

Stealing carcass as within statute making it larceny to steal of cattle or livestock. 78 A.L.R.2d 1100.

Taking, and pledging or pawning, another's property as larceny. 82 A.L.R.2d 863.

Stolen money or property as subject of larceny or robbery. 89 A.L.R.2d 1435.

Larceny: entrapment or consent. 10 A.L.R.3d 1121.

Larceny: cotenant taking cotenancy property. 17 A.L.R.3d 1394.

Single or separate larceny predicated upon stealing property from different owners at the same time. 37 A.L.R.3d 1407.

Criminal prosecution based upon breaking into or taking money or goods from vending machine or other coin-operated machine. 45 A.L.R.3d 1286.

Series of takings over a period of time as involving single or separate larcenies. 53 A.L.R.3d 398.

Changing of price tags by patron in self-service store as criminal offense. 60 A.L.R.3d 1293.

Asportation of motor vehicle as necessary element to support charge of larceny. 70 A.L.R.3d 1202.

What constitutes larceny "from a person". 74 A.L.R.3d 271.

Receiver of stolen goods as accomplice of thief for purposes of corroboration. 74 A.L.R.3d 560.

What conduct amounts to an overt act or acts done toward commission of larceny so as to sustain charge of attempt to commit larceny. 76 A.L.R.3d 842.

Retaking of money lost at gambling as robbery or larceny. 77 A.L.R.3d 1363.

Criminal liability for misappropriation of trade secret. 84 A.L.R.3d 967.

Admissibility of photographs of stolen property. 94 A.L.R.3d 357.

Applicability of best evidence rule to proof of ownership of allegedly stolen personal property in prosecution for theft. 94 A.L.R.3d 824.

Coercion, compulsion, or duress as defense to charge of robbery, larceny, or related crime. 1 A.L.R.4th 481.

Retailer's failure to pay to government sales or use tax funds as constituting larceny or embezzlement. 8 A.L.R.4th 1068.

What constitutes "constructive" possession of stolen property to establish requisite element of possession supporting offense of receiving stolen property. 30 A.L.R.4th 488.

Criminal liability for theft of, interference with, or unauthorized use of, computer programs, files, or systems. 51 A.L.R.4th 971.

Cat as subject of larceny. 55 A.L.R.4th 1080.

Possession of stolen property as continuing offense. 24 A.L.R.5th 132.

Liability for loss of hat, coat, or other property deposited by customer in place of business. 54 A.L.R.5th 393.

Consideration of sales tax in determining value of stolen property or amount of theft. 63 A.L.R.5th 417.

Joyriding or similar charge as lesser-included offense of larceny or similar charge. 78 A.L.R.5th 567.

What constitutes taking and carrying away, with intent to steal or purloin, within the meaning of the Federal Bank Robbery Act (18 USCS § 2113(b)). 46 A.L.R. Fed. 841.

What constitutes "thing of value of the United States" of which stealing, embezzling, or receiving violates 18 USCS § 641. 76 A.L.R. Fed. 323.

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50 Am. Jur. 2d, Larceny §§ 1 et seq.

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13 Am. Jur. Trials, Defending Minor Felony Cases §§ 1 et seq.

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§ 97-17-42. Larceny; taking possession of or taking away a motor vehicle; second or subsequent offense.

(1) Any person who shall, willfully and without authority, take possession of or take away a motor vehicle of any value belonging to another, with intent to either permanently or temporarily convert it or to permanently or temporarily deprive the owner of possession or ownership, and any person who knowingly shall aid and abet in the taking possession or taking away of the motor vehicle, shall be guilty of larceny and shall be punished based on the value of the motor vehicle involved according to the schedule in Section 97-17-41. If the value of the motor vehicle involved is One Thousand Dollars ($1,000.00) or less, the person shall be punished according to the schedule in Section 97-17-43.

(2) Any person convicted under this section who causes damage to any motor vehicle shall be ordered by the court to pay restitution to the owner or owners of the motor vehicle or vehicles damaged.

(3) This section shall not apply to the enforcement of a security interest in a motor vehicle.

(4) Any person who shall be convicted for a second or subsequent offense under this section shall be imprisoned in the Penitentiary for a term not exceeding twice the term authorized based on the value of the motor vehicle involved in the subsequent offense according to the schedule in Section 97-17-41 or shall be fined not more than Ten Thousand Dollars ($10,000.00), or both.

HISTORY: Laws, 1996, ch. 544, § 1; Laws, 2003, ch. 499, § 2; Laws, 2007, ch. 464, § 1; Laws, 2014, ch. 457, § 16, eff from and after July 1, 2014.

Cross References — Enhancement of offenses listed in 99-19-401(2) if the instrumentality used in the commission of the 99-19-401(2) offense was initially obtained in the course of the commission of the crime(s) provided for in this section, see § 99-19-401.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Sufficiency of evidence.
3. Defense of necessity.
4. Jury instruction.

1. In general.

Circuit court did not err in denying defendant's motion for a new trial because the verdict was not so contrary to the overwhelming weight of the evidence that to allow the verdict to stand would sanction an unconscionable injustice; defendant's girlfriend specifically testified that she did not give defendant permission to take her car. Clayton v. State, 271 So. 3d 672, 2018 Miss. App. LEXIS 592 (Miss. Ct. App. 2018).

Because there was no logical reason to believe that a jury would have convicted defendant of petit larceny but not motor vehicle theft, defendant's counsel's decision not to request such an instruction was not evidence of incompetence. Shinn v. State, 174 So. 3d 961, 2015 Miss. App. LEXIS 479 (Miss. Ct. App. 2015).

Defendant's indictment clearly charged motor vehicle theft and specifically referenced the appropriate section of the Mississippi Code. The indictment was not ambiguous, so defendant was appropriately sentenced for motor vehicle theft. Shinn v. State, 174 So. 3d 961, 2015 Miss. App. LEXIS 479 (Miss. Ct. App. 2015).

Indictment explicitly stated that defendant was being charged with motor vehicle theft under Miss. Code Ann. § 97-17-42; there was no evidence presented that defendant was surprised or that he did not not know, to his prejudice, that he was being prosecuted under § 97-17-42 for motor vehicle theft; therefore, there being no prejudice or surprise, the trial judge did not abuse his discretion in permitting an on-the-record amendment of the indictment. Mixon v. State, 921 So. 2d 275, 2005 Miss. LEXIS 798 (Miss. 2005).

Trial court properly rejected tendered instruction that required the jury in a prosecution for violation of Miss. Code Ann. § 97-17-42 that the jury must have known that the vehicle in question was stolen took possession; the tendered instruction was an improper statement of the law as guilty knowledge was not an element of the offense. Johnson v. State, 823 So. 2d 582, 2002 Miss. App. LEXIS 433 (Miss. Ct. App. 2002).

Defendant did not show that he was prejudiced by the mistaken inclusion of the dollar amount of the vehicle in the indictment for motor vehicle theft under this section that is required under § 97-17-41(1) for grand larceny; he was not unaware of what crime he was charged with committing or unable to prepare an adequate defense because of the indictment. Richmond v. State, 751 So. 2d 1038, 1999 Miss. LEXIS 387 (Miss. 1999).

It is within the province of the legislature to proscribe certain acts as malum prohibitum with no required mens rea as this statute does, and the legislature's failure to set out a mens rea does not automatically render the statute unconstitutional. Richmond v. State, 751 So. 2d 1038, 1999 Miss. LEXIS 387 (Miss. 1999).

2. Sufficiency of evidence.

Defendant's motion for judgment notwithstanding the verdict was properly denied because sufficient evidence was presented to support his conviction of the unlawful possession of a motor vehicle; defendant's girlfriend specifically testified that she did not give defendant permission to take her car. Clayton v. State, 271 So. 3d 672, 2018 Miss. App. LEXIS 592 (Miss. Ct. App. 2018).

Circuit court did not err in denying defendant's motion for a directed verdict and motion for a judgment notwithstanding the verdict, nor did it err in refusing to give a peremptory instruction, because sufficient evidence was presented at trial to support defendant's conviction for the unlawful possession of a motor vehicle; defendant's girlfriend specifically testified that she did not give defendant permission to take her car. Clayton v. State, 271 So. 3d 672, 2018 Miss. App. LEXIS 592 (Miss. Ct. App. 2018).

Defendant's convictions for house burglary, aggravated assault, armed robbery, and auto theft were proper because the evidence was sufficient. In part, defendant severely beat the victim, demanded that she give him her purse, and then took her purse, a gun, and a set of keys to the victim's vehicle. The victim later identified defendant, based upon her own independent recollection, in a photographic lineup. Brunner v. State, 37 So. 3d 645, 2009 Miss. App. LEXIS 755 (Miss. Ct. App. 2009), cert. denied, 36 So. 3d 455, 2010 Miss. LEXIS 323 (Miss. 2010).

Circuit court properly denied defendant's motion for a new trial based on defendant's argument that the guilty verdicts were based on insufficient evidence and/or were contrary to law or the weight of the evidence because: (1) allowing the conviction for convicted-felon-in-possession-of-firearm charge in violation of Miss. Code Ann. § 97-37-5(1) (Rev. 2006) to stand would not have been prejudicial to defendant since all of the evidence pointed to defendant, a prior convicted felon, being in possession of a firearm while not under duress, a conclusion that could have been reached by any rational juror; and (2) since there was conflicting testimony in the case, reasonable and fairminded jurors in the exercise of impartial judgment could have reached different conclusions as to the verdict, thus resulting in the appellate court's finding that there was legally sufficient evidence to convict defendant of motor-vehicle theft Miss. Code Ann. § 97-17-42(1) (Rev. 2006). Davis v. State, 18 So. 3d 842, 2009 Miss. LEXIS 475 (Miss. 2009).

Defendant's conviction for motor vehicle theft was appropriate because the testimony placed defendant in the stolen vehicle during the dealership's summer sale and established that he drove the vehicle off of the auto lot without the authority to do so; although defendant claimed that he was given permission to use the vehicle and his testimony was corroborated by a witness, the jury was the final judge of witness credibility. Carter v. State, 963 So. 2d 33, 2007 Miss. App. LEXIS 527 (Miss. Ct. App. 2007).

In a case in which defendant and two accomplices had taken four school buses for the purpose of playing demolition derby, defendant's argument failed on appeal that insufficient evidence supported his conviction on two counts of taking a motor vehicle because the state failed to identify with sufficient specificity the buses involved in the incident; the state proved that the buses belonged to a school district through the testimony of the investigating officer and through photographs of the buses. Hendrix v. State, 957 So. 2d 1023, 2007 Miss. App. LEXIS 34 (Miss. Ct. App. 2007).

Defendant, convicted for stealing a car, argued on appeal that because the State did not call the co-owner of the sales lot to testify that he did not give defendant permission to take the car, reasonable doubt existed regarding whether the co-owner gave defendant permission to take the station wagon. Defendant was attacking the sufficiency of the evidence, rather than its weight – however, the issue of whether the co-owner gave defendant permission to take the car created a question of fact for the jury to resolve and the appellate court's standard of review prevented it from substituting its conclusion for the jury's, so the jury's decision stood. Allen v. State, 906 So. 2d 802, 2004 Miss. App. LEXIS 1138 (Miss. Ct. App. 2004).

Defendant was shown to have been in close proximity to the stolen vehicle and to have made statements to at least two individuals consistent with a claim of ownership or, at a minimum, the right to possession of the vehicle; defendant's claim of right of possession, plainly refuted by testimony, was direct evidence implicating defendant, and the trial court was plainly correct in denying a circumstantial evidence instruction and also properly admitted a knife found on defendant's person, probative of how the vehicle may have been started without a key. Parks v. State, 859 So. 2d 1084, 2003 Miss. App. LEXIS 1087 (Miss. Ct. App. 2003).

Because (1) the evidence showed that, while police attempted to arrest defendant on an outstanding warrant, defendant jumped into a vehicle, twice drove the vehicle to strike a police officer, and then defendant drove the vehicle into another police officer vehicle, causing injury, and (2) the court was not persuaded that the evidence tending to demonstrate defendant's innocence was of such weight that it constituted a substantial miscarriage of justice to permit the present verdicts to stand, the court affirmed defendant's convictions of taking possession of or taking away a motor vehicle and aggravated assault on a law enforcement officer. Hogan v. State, 854 So. 2d 497, 2003 Miss. App. LEXIS 852 (Miss. Ct. App. 2003).

3. Defense of necessity.

Defense of necessity to the charge of the motor vehicle theft was supported by the evidence and was not mentioned anywhere else in the jury instructions, and because it was not addressed in jury instructions, defendant suffered an injustice since the denial of that instruction prevented defendant's proof-grounded theory of the case from being presented. Therefore, the failure of the trial judge to instruct the jury on the defense of necessity was not harmless error and could have been the difference between defendant being found guilty of motor-vehicle theft in violation of Miss. Code Ann. § 97-17-42(1) (Rev. 2006), or not, and thus denied defendant his right to a fair trial. Davis v. State, 18 So. 3d 842, 2009 Miss. LEXIS 475 (Miss. 2009).

4. Jury instruction.

Trial court's jury instruction for automobile theft was erroneous because the instruction failed to include the value element, which determined the statutory sentencing range; and a fact increasing either end of the sentencing range produced a new penalty and constituted an ingredient of the offense. Shell-Blackwell v. State, — So. 3d —, 2020 Miss. App. LEXIS 334 (Miss. Ct. App. May 26, 2020).

§ 97-17-43. Petit larceny defined; penalty.

(1) If any person shall feloniously take, steal and carry away any personal property of another under the value of One Thousand Dollars ($1,000.00), he shall be guilty of petit larceny and, upon conviction, may be punished by imprisonment in the county jail not exceeding six (6) months or by a fine not exceeding One Thousand Dollars ($1,000.00), or both if the court finds substantial and compelling reasons why the offender cannot be safely and effectively supervised in the community, is not amenable to community-based treatment, or poses a significant risk to public safety. If such a finding is not made, the court shall suspend the sentence of imprisonment and impose a period of probation not exceeding one (1) year or a fine not exceeding One Thousand Dollars ($1,000.00), or both. The total value of property taken, stolen or carried away by the person from a single victim shall be aggregated in determining the gravity of the offense. Any person convicted of a third or subsequent offense under this section where the value of the property is not less than Five Hundred Dollars ($500.00), shall be imprisoned in the Penitentiary for a term not exceeding three (3) years or fined an amount not exceeding One Thousand Dollars ($1,000.00), or both.

(2) If any person shall feloniously take, steal and carry away any property of a church, synagogue, temple or other established place of worship under the value of One Thousand Dollars ($1,000.00), he shall be guilty of petit larceny and, upon conviction, may be punished by imprisonment in the county jail not exceeding one (1) year or by fine not exceeding Two Thousand Dollars ($2,000.00), or both if the court finds substantial and compelling reasons why the offender cannot be safely and effectively supervised in the community, is not amenable to community-based treatment, or poses a significant risk to public safety. If such a finding is not made, the court shall suspend the sentence of imprisonment and impose a period of probation not exceeding one (1) year or a fine not exceeding Two Thousand Dollars ($2,000.00), or both. Any person convicted of a third or subsequent offense under this section where the value of the property is not less than Five Hundred Dollars ($500.00), shall be imprisoned in the Penitentiary for a term not exceeding three (3) years or fined an amount not exceeding Two Thousand Dollars ($2,000.00), or both.

(3) Any person who leaves the premises of an establishment at which motor fuel offered for retail sale was dispensed into the fuel tank of a motor vehicle by driving away in that motor vehicle without having made due payment or authorized charge for the motor fuel so dispensed, with intent to defraud the retail establishment, shall be guilty of petit larceny and punished as provided in subsection (1) of this section and, upon any second or subsequent such offense, the driver's license of the person shall be suspended as follows:

(a) The person shall submit the driver's license to the court upon conviction and the court shall forward the driver's license to the Department of Public Safety.

(b) The first suspension of a driver's license under this subsection shall be for a period of six (6) months.

(c) A second or subsequent suspension of a driver's license under this subsection shall be for a period of one (1) year.

(d) At the expiration of the suspension period, and upon payment of a restoration fee of Twenty-five Dollars ($25.00), the suspension shall terminate and the Department of Public Safety shall return the person's driver's license to the person. The restoration fee shall be in addition to the fees provided for in Title 63, Chapter 1, and shall be deposited into the State General Fund in accordance with Section 45-1-23.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 1(19); 1857, ch. 64, art. 191; 1871, § 2653; 1880, § 2902; 1892, § 1174; 1906, § 1252; Hemingway's 1917, § 982; 1930, § 1010; 1942, § 2242; Laws, 1896, ch. 85; Laws, 1940, ch. 238; Laws, 1966, ch. 360, § 1; Laws, 1971, ch. 491, § 1; Laws, 1992, ch. 380, § 2; Laws, 1997, ch. 473, § 6; Laws, 1999, ch. 553, § 1; Laws, 2003, ch. 499, § 3; Laws, 2004, ch. 526, § 8; Laws, 2014, ch. 457, § 17, eff from and after July 1, 2014.

Cross References — Jurisdiction of justices of the peace of cases under $200.00, see § 89-17-21.

Stealing wool from dead sheep, see § 97-17-49.

Another section derived from same 1942 code section, see § 97-17-53.

Crime of looting, see § 97-17-65.

Theft of credit cards, see § 97-19-13.

Theft of electricity, gas or water by tampering with meters, see § 97-25-3.

Limitations of prosecutions, generally, see § 99-1-5.

Description of property in indictments for larceny, see § 99-7-31.

Enhancement of offenses listed in 99-19-401(2) if the instrumentality used in the commission of the 99-19-401(2) offense was initially obtained in the course of the commission of the crime(s) provided for in this section, see § 99-19-401.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Affidavit charging offense.
3. —Variance between affidavit and proof.
4. Malicious Prosecution.
5. Sufficient Evidence.
6. Lesser included offense jury instruction

1. In general.

In defendant's cocaine possession case, the trial judge clearly erred by allowing the State to impeach a vital defense witness with a misdemeanor petty-larceny conviction; because the issue of whether defendant possessed cocaine turned entirely on whether the jury believed the witness, the damage required reversal. Baskin v. State, 145 So. 3d 601, 2014 Miss. LEXIS 68 (Miss. 2014).

Fact that Miss. Code Ann. § 97-17-33(2) and Miss. Code Ann. § 97-17-43(2) provide harsher penalties for crimes committed in places of worship does not amount to government endorsement of religion; therefore, they do not violate the Establishment Clause. Dimaio v. State, 951 So. 2d 581, 2006 Miss. App. LEXIS 782 (Miss. Ct. App. 2006).

Lesser-included offense of petit larceny was not warranted where there was sufficient testimony for the jury to conclude the value of the stolen carburetor exceeded $250, as there was evidence from the owner that the carburetor was worth $1000, and the replacement cost $400. Nelson v. State, 839 So. 2d 584, 2003 Miss. App. LEXIS 148 (Miss. Ct. App. 2003).

Defendant's motion for a peremptory instruction and judgment notwithstanding the verdict was properly denied by the trial court where considering the strength of all inferences and circumstances of possession by defendant of the victim's check, together with his attempt to negotiate the check at the bank, the jury was fully warranted in concluding that defendant was guilty of uttering a forged instrument and petit larceny. Miles v. State, 864 So. 2d 963, 2003 Miss. App. LEXIS 1039 (Miss. Ct. App. 2003).

In a prosecution for grand larceny based on the taking of $750 from a cash drawer in a bank, the trial court did not err in denying the defendant's request for a jury instruction regarding the lesser included offense of petit larceny, even though no witness could testify to actually seeing more than $100 being taken. Ford v. State, 555 So. 2d 691, 1989 Miss. LEXIS 512 (Miss. 1989).

Evidence was insufficient to support finding beyond reasonable doubt that value of stolen property was in excess of $100; therefore, defendant should have been sentenced for offense of petit larceny, where in affidavit sworn out in justice court, value of property was set at $90, while at trial testimony regarding value of stolen property was inconsistent. Dulin v. State, 507 So. 2d 897, 1987 Miss. LEXIS 2244 (Miss. 1987).

Contraband liquor may be the subject of larceny. Passons v. State, 208 Miss. 545, 45 So. 2d 131, 1950 Miss. LEXIS 273 (Miss. 1950), overruled, Simmons v. State, 568 So. 2d 1192, 1990 Miss. LEXIS 605 (Miss. 1990).

Petit larceny statute and statute respecting larceny by severing fixtures are separate statutes containing separate and distinct elements to constitute crime. O'Neal v. State, 166 Miss. 538, 146 So. 634, 1933 Miss. LEXIS 353 (Miss. 1933).

2. Affidavit charging offense.

The use of the word "feloniously" in describing larceny is not merely descriptive of the grade of the offense, but is an essential ingredient of the crime. Austin v. State, 195 Miss. 317, 15 So. 2d 684, 1943 Miss. LEXIS 164 (Miss. 1943).

Affidavit charging that accused "did then and there unlawfully take, steal and carry away" certain personal property was fatally defective for omitting the word "feloniously" in describing larceny, and such omission going to the very essence of the offense might be availed of for the first time on appeal. Austin v. State, 195 Miss. 317, 15 So. 2d 684, 1943 Miss. LEXIS 164 (Miss. 1943).

Affidavit charging defendant with stealing tomato plants valued at $17, personal property of person named, charged offense under petit larceny statute. O'Neal v. State, 166 Miss. 538, 146 So. 634, 1933 Miss. LEXIS 353 (Miss. 1933).

Where affidavit charges petit larceny by alleging different articles stolen to be property of different persons, on trial state will be compelled to show a single asportation. Ward v. State, 90 Miss. 249, 43 So. 466, 1907 Miss. LEXIS 63 (Miss. 1907); State v. Dalton, 91 Miss. 162, 44 So. 802 (Miss. 1907); State v. Quintini, 51 So. 276 (Miss. 1910).

3. —Variance between affidavit and proof.

In a prosecution for larceny of a CB radio, speaker and antenna, the conviction would be affirmed only as to petit larceny where the evidence consisted of testimony from the victim that his used radio was worth at least $150, which assessment was contradicted by a defense witness who sold new and used radios and who stated that the stolen radio was not worth as much as $100 on the open market. Barry v. State, 406 So. 2d 45, 1981 Miss. LEXIS 2292 (Miss. 1981).

Where affidavit charged offense under petit larceny statute, but proof showed offense under statute respecting larceny in severing fixtures, court should have granted peremptory instruction and held accused under bond for further proceedings. O'Neal v. State, 166 Miss. 538, 146 So. 634, 1933 Miss. LEXIS 353 (Miss. 1933).

Where affidavit charged stealing of tomato plants as personal property, offense under petit larceny statute, proof showing plants were growing when stolen proved different offense, and conviction could not be pleaded as res judicata against new trial under statute respecting larceny in severing fixtures. O'Neal v. State, 166 Miss. 538, 146 So. 634, 1933 Miss. LEXIS 353 (Miss. 1933).

4. Malicious Prosecution.

Summary judgment was properly granted in favor of a former employer in a malicious prosecution case because there was probable cause to arrest a former employee for petit larceny based on the act of alerting a customer to cash in a token in a slot machine; moreover, there was no evidence that a former employer acted with malice by having the employee arrested for the theft. Croft v. Grand Casino Tunica , Inc., 910 So. 2d 66, 2005 Miss. App. LEXIS 55 (Miss. Ct. App. 2005).

5. Sufficient Evidence.

Defendant's conviction for grand larceny in violation of Miss. Code Ann. § 97-17-43 was proper where one of his codefendants testified that he and defendant were together in his brother's trailer, devising the plan to steal cigarettes, on the morning that the larceny took place. Two other co-defendants testified as to the incriminating statements made by defendant after the crime had occurred. Ross v. State, 914 So. 2d 814, 2005 Miss. App. LEXIS 853 (Miss. Ct. App. 2005).

6. Lesser included offense jury instruction

Trial court did not err in denying defendant's request for lesser-included-offense instructions as no factual basis supporting an instruction that a simple robbery, a robbery without a deadly weapon, occurred or that a mere larceny occurred because, during the trial, no conflicting testimony was adduced about whether a robbery occurred, whether the victims were held at gunpoint, and who was involved - the accomplices and defendant; and participation in an armed robbery was sufficient to make one a principal in the crime regardless of whether the participant was the person holding the weapon. Sharkey v. State, 265 So. 3d 151, 2019 Miss. LEXIS 86 (Miss. 2019).

Trial court erred by refusing to give a jury instruction on petit larceny as a lesser-included offense of armed robbery, and therefore defendant's conviction was reversed, because the victim's girlfriend testified that she never saw defendant with a gun on display. The evidence was sufficient for a jury to have found that defendant obtained the victim's property by trick when he tossed the victim a bag of cheap jeans and then fled with the victim's sneakers, shirt, and belt. Jones v. State, 281 So. 3d 137, 2019 Miss. App. LEXIS 74 (Miss. Ct. App. 2019).

OPINIONS OF THE ATTORNEY GENERAL

The offense of petit larceny should be handled as a misdemeanor and may be heard in justice court. Embry, October 23, 1998, A.G. Op. #98-0662.

RESEARCH REFERENCES

ALR.

Single or separate larceny predicated upon stealing property from different owners at the same time. 37 A.L.R.3d 1047.

Changing of price tags by patron in self-service store as criminal offense. 60 A.L.R.3d 1293.

Asportation of motor vehicle as necessary element to support charge of larceny. 70 A.L.R.3d 1202.

What constitutes larceny "from a person". 74 A.L.R.3d 271.

What conduct amounts to an overt act or acts done toward commission of larceny so as to sustain charge of attempt to commit larceny. 76 A.L.R.3d 842.

Admissibility of photographs of stolen property. 94 A.L.R.3d 357.

Cat as subject of larceny. 55 A.L.R.4th 1080.

Liability for loss of hat, coat, or other property deposited by customer in place of business. 54 A.L.R.5th 393.

Consideration of sales tax in determining value of stolen property or amount of theft. 63 A.L.R.5th 417.

What are "goods, wares, merchandise, or securities," within meaning of 18 USC § 2314, making transportation of stolen goods a criminal offense. 6 A.L.R. Fed. 194.

Am. Jur.

50 Am. Jur. 2d, Larceny §§ 1 et seq.

2 Am. Jur. Trials, Investigating Particular Crimes §§ 15-21 (larceny).

13 Am. Jur. Trials, Defending Minor Felony Cases §§ 1 et seq.

CJS.

52B C.J.S., Larceny §§ 12, 79, 80, 82.

Practice References.

Ronald L. Schoenberg, Criminal Law Deskbook (Matthew Bender).

§ 97-17-45. Larceny; stealing bond, note, bill, securities, etc.; proof of value.

If any person shall steal any bond, covenant, note, bank-bill, bill of exchange, draft, order, receipt, or other evidence of debt, or chose in action, or any public security issued by the United States, or any state, or any instrument whereby any demand, right, or obligation shall be created, increased, released, extinguished, or diminished, the money due thereon, or secured thereby, and remaining unsatisfied, or which in any event might be collected thereon, or the value of the property transferred or affected thereby, as the case may be, shall be deemed the value of the article sold, without further proof thereof.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 4(67); 1857, ch. 64, art. 193; 1871, § 2654; 1880, § 2904; 1892, § 1176; 1906, § 1254; Hemingway's 1917, § 984; 1930, § 1012; 1942, § 2244.

Cross References — Theft or destruction of court or other public records and papers, see § 97-9-3.

Alteration, destruction or concealment of will, see § 97-9-77.

Grand larceny, see § 97-17-41.

Petit larceny, see § 97-17-43.

Theft of railroad tickets, see § 97-25-11.

Description of property in indictments for larceny, see § 99-7-31.

Enhancement of offenses listed in 99-19-401(2) if the instrumentality used in the commission of the 99-19-401(2) offense was initially obtained in the course of the commission of the crime(s) provided for in this section, see § 99-19-401.

JUDICIAL DECISIONS

1. In general.

It is not error upon the trial of one charged under this section [Code 1942, § 2244] with larceny of a promissory note to exclude evidence that the paper was uncollectible because worthless. McDowell v. State, 74 Miss. 373, 20 So. 864, 1896 Miss. LEXIS 120 (Miss. 1896).

RESEARCH REFERENCES

Am. Jur.
50 Am. Jur. 2d, Larceny §§ 68, 76.
2 Am. Jur. Trials, Investigating Particular Crimes §§ 15-21 (larceny).

CJS.
52B C.J.S., Larceny §§ 24, 27.

§ 97-17-47. Larceny; severing crops, or parts of improvements or enclosures.

If any person shall sever from the soil of another any produce growing thereon, or shall sever from any building, gate, fence, railing, or other improvement or enclosure any part thereof, and shall take and convert the same to his own use with intent to steal the same, he shall be guilty of larceny in the same manner and of the same degree as if the article so taken had been severed at some previous and different time and shall be punished based on the value of the property involved according to the schedule in Sections 97-17-41 and 97-17-43.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 4(69); 1857, ch. 64, art. 194; 1871, § 2655; 1880, § 2905; 1892, § 1178; 1906, § 1256; Hemingway's 1917, § 986; 1930, § 1014; 1942, § 2246; Laws, 2014, ch. 457, § 18, eff from and after July 1, 2014.

Cross References — Trespass to buildings, fences, etc., see § 95-5-23.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Affidavit charging offense.

1. In general.

Where two butane gas heaters were placed in the auditorium of the church and they were bolted or screwed onto the pipes which had been run under and through the floor and which carried gas, the gas heaters were not fixtures and defendant was properly indicted under Code 1942, § 2240, which deals with common-law larceny of personal property, instead of this section [Code 1942, § 2246]. Garrett v. State, 213 Miss. 328, 56 So. 2d 809, 1952 Miss. LEXIS 370 (Miss. 1952).

Petit larceny statute and statute respecting larceny by severing fixtures are separate statutes containing separate and distinct elements to constitute crime. O'Neal v. State, 166 Miss. 538, 146 So. 634, 1933 Miss. LEXIS 353 (Miss. 1933).

2. Affidavit charging offense.

Where affidavit charged offense under petit larceny statute, but proof showed offense under statute respecting larceny in severing fixtures, court should have granted peremptory instruction and held accused under bond for further proceedings. O'Neal v. State, 166 Miss. 538, 146 So. 634, 1933 Miss. LEXIS 353 (Miss. 1933).

Where affidavit charged stealing of tomato plants as personal property, offense under petit larceny statute, proof showing plants were growing when stolen proved different offense, and conviction could not be pleaded as res judicata against new trial under statute respecting larceny in severing fixtures. O'Neal v. State, 166 Miss. 538, 146 So. 634, 1933 Miss. LEXIS 353 (Miss. 1933).

RESEARCH REFERENCES

Am. Jur.
50 Am. Jur. 2d, Larceny §§ 54, 55.
2 Am. Jur. Trials, Investigating Particular Crimes §§ 15-21 (larceny).

CJS.
52B C.J.S., Larceny §§ 12, 79, 80, 82.

§ 97-17-49. Larceny; shearing wool from dead sheep.

If any person shall shear or take off in any manner the wool from any sheep that has been killed by dog or otherwise, without first obtaining permission from the owner of such sheep so killed, with intent to convert to his own use or conceal the same, he shall be guilty of a misdemeanor, and on conviction, shall be fined not less than five dollars nor more than twenty-five dollars and imprisoned in the county jail not less than five days nor more than twenty days.

HISTORY: Codes, 1880, § 818; 1892, § 1180; 1906, § 1258; Hemingway's 1917, § 988; 1930, § 1016; 1942, § 2248.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am. Jur.
50 Am. Jur. 2d, Larceny § 58.

CJS.
52B C.J.S., Larceny §§ 12, 79, 80, 82.

§ 97-17-51. Larceny; stealing dog.

Every person who shall feloniously steal, take and carry away any dog, the property of another, shall be subject to indictment therefor, and on conviction shall be punished by a fine of not more than five hundred dollars ($500.00), or imprisoned in the county jail not more than six (6) months, or both, or imprisoned in the penitentiary not less than one year nor more than two years.

HISTORY: Codes, 1880, § 2903; 1892, § 1175; 1906, § 1253; Hemingway's 1917, § 983; 1930, § 1011; 1942, § 2243; Laws, 1962, ch. 314, eff from and after July 1, 1962.

Cross References — Petit larceny, see § 97-17-43.

RESEARCH REFERENCES

ALR.
Admissibility of photographs of stolen property. 94 A.L.R.3d 357.
Cat as subject of larceny. 55 A.L.R.4th 1080.

Am. Jur.
50 Am. Jur. 2d, Larceny § 58.

CJS.
52B C.J.S., Larceny §§ 12, 22, 23, 57 et seq., 79, 80, 82.

§ 97-17-53. Larceny; knowing and willful stealing or carrying away of livestock; obtaining livestock by means of fraudulent conduct; prima facie evidence of fraudulent conduct; restitution.

(1)(a) If any person shall knowingly, willfully and feloniously take, steal and carry away livestock of any value belonging to another without the consent of the owner, he is guilty of larceny and punishable pursuant to Section 97-17-41 or 97-17-43 depending on the gravity of the offense. The total value of the livestock obtained from the individual owner or merchant shall be aggregated in determining the gravity of the offense.

(b) If any person obtains livestock belonging to another by means of any fraudulent conduct, practice or representation, he is guilty of fraud and punishable pursuant to Section 97-19-39. The total value of the livestock obtained from the individual owner or merchant shall be aggregated in determining the gravity of the offense.

(c) Obtaining livestock from a commission merchant or livestock owner by representing that prompt payment will be made pursuant to Section 409 of the Packers and Stockyards Act, 7 USCS Section 228b, and failing to make prompt payment in accordance therewith, shall constitute prima facia evidence of fraudulent conduct, practices or representation.

(2) In addition to any such fine or imprisonment which may be imposed, the court shall order that restitution be made to the owner of any such stolen livestock. The measure for restitution in money shall be the amount of the actual financial loss to the owner of the livestock, including any loss of income, any court costs and attorney's fees incurred by the owner to recover the stolen livestock, the current replacement value of the stolen livestock if the livestock is not recovered, and any other costs incurred by the owner as a result of actions in violation of subsection (1) of this section.

(3) For purposes of this section, the term "livestock" means horses, cattle, swine, sheep and other domestic animals produced for profit.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 1(19); 1857, ch. 64, art. 191; 1871, § 2653; 1880, § 2902; 1892, § 1174; 1906, § 1252; Hemingway's 1917, § 982; 1930, § 1010; 1942, § 2242; Laws, 1896, ch. 85; Laws, 1940, ch. 238; Laws, 1966, ch. 360, § 1; Laws, 1971, ch. 491, § 1; Laws, 1981, ch. 385, § 1; Laws, 1993, ch. 438, § 1; Laws, 2013, ch. 458, § 1, eff from and after July 1, 2013.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in a statutory reference in the first sentence of (1). The reference to "Section 97-17-41 or 97-19-43" was changed to "Section 97-17-41 or 97-17-43." The Joint Committee ratified the correction at its August 1, 2013, meeting.

Cross References — Authority of conservation officers of Commission on Wildlife, Fisheries and Parks to apprehend violators, see § 49-1-44.

Brands, marks, and transporting cattle, see § 69-29-1.

Any person convicted of stealing livestock subject to penalties provided in this section, see § 69-29-11.

Any person convicted of stealing livestock subject to penalties provided in this section, see § 69-29-105.

Jurisdiction of justices of the peace of cases under $200.00, see § 89-17-21.

Penalty for maliciously or mischievously injuring livestock, see § 97-41-15.

Limitations of prosecutions, see § 99-1-5.

Description of property in indictments for larceny, see § 99-7-31.

Sentence upon conviction, see § 99-19-17.

Restitution to victims of crimes, generally, see §§ 99-37-1 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Evidence.

1. In general.

Where three defendants are charged with the larceny of a cow, but there is no evidence that a cow was missing or that a cow was stolen, and the only evidence that a crime had been committed were the confessions of each defendant implicating the other defendants, the evidence is insufficient to sustain a criminal conviction; the state must prove the corpus delecti of the body of a crime by showing that the subject crime charged did in fact occur; the confession of one criminally accused will not suffice to sustain a conviction absent proof of the body of the crime. Bullock v. State, 447 So. 2d 1284, 1984 Miss. LEXIS 1685 (Miss. 1984).

Evidence in a prosecution for larceny of a cow under this section was insufficient as a matter of law to establish the corpus delicti, where each of the three defendants who had been jointly indicted, tried and convicted, had confessed, where the confession of each implicated the others, and where there was no independent proof that a cow was missing from the herd of the alleged victim, in that the confessions of the defendants could not be used against each other. Bullock v. State, 447 So. 2d 1284, 1984 Miss. LEXIS 1685 (Miss. 1984).

In a prosecution for larceny of a cow the defendant was improperly convicted of such crime, where at the time the men arrived at the cow's location it was dead, where there was no evidence placing the defendant at the scene when the cow was killed, where there was no evidence that the cow had been shot, and where there was no testimony or evidence from which it might reasonably have been inferred that the defendant killed the cow or had knowledge that the cow did not belong to the person who had sought his assistance in moving the cow. Sessums v. State, 419 So. 2d 189, 1982 Miss. LEXIS 2133 (Miss. 1982).

In a prosecution for larceny of a black Angus heifer belonging to another, the trial court erred in refusing a defense instruction based upon § 97-17-61 where the defendant presented evidence that he had accidentally struck the heifer with his automobile, that the animal had been killed with a gunshot to put it out of its misery, and that he and others had taken the carcass and had it cut, wrapped and divided four ways; since the defendant's proof tended to establish that there was no intent to appropriate the cow at any time before it was shot, thereby negating the crime of larceny, the trial judge in effect peremptorily instructed the jury to disregard the defendant's defense when he refused the requested instruction. Knowles v. State, 410 So. 2d 380, 1982 Miss. LEXIS 1867 (Miss. 1982).

An indictment charging the larceny of a "neat calf" was in compliance with that part of the section which states that if any person shall feloniously take, steal and carry away any of the kind of neat or horned cattle, he shall be guilty of larceny. Miller v. State, 243 So. 2d 558, 1971 Miss. LEXIS 1518 (Miss. 1971).

The larceny of cattle being a felony under this section [Code 1942, § 2242], an indictment for cattle-stealing need not allege value. Pearson v. State, 248 Miss. 353, 158 So. 2d 710, 1963 Miss. LEXIS 401 (Miss. 1963).

2. Evidence.

Evidence was sufficient to support a conviction where (1) the two victims both testified they had cows stolen from their fields and that this taking was in no way consensual, (2) an investigator testified that he was able to verify that one of the cows had been sold under the name of the defendant and the two cows which had not yet been sold were left under the name of his fiancee, and (3) the investigator also testified that the defendant confessed to the crime. Forrest v. State, 782 So. 2d 1260, 2001 Miss. App. LEXIS 124 (Miss. Ct. App. 2001).

RESEARCH REFERENCES

ALR.

Stealing carcass as within statute making it larceny to steal cattle or livestock. 78 A.L.R.2d 1100.

Single or separate larceny predicated upon stealing property from different owners at the same time. 37 A.L.R.3d 1407.

Admissibility of photographs of stolen property. 94 A.L.R.3d 357.

What are "goods, wares, merchandise, or securities," within meaning of 18 USC § 2314, making transportation of stolen goods a criminal offense. 6 A.L.R. Fed. 194.

Am. Jur.

50 Am. Jur. 2d, Larceny § 58.

2 Am. Jur. Trials, Investigating Particular Crimes, §§ 15-21 (larceny).

CJS.

52B C.J.S., Larceny §§ 12, 79, 80, 82.

§ 97-17-55. Larceny; stealing milk from cow.

Any person who shall milk the cow of another, knowingly, without his consent, or who shall pen or confine by any means any milk-cow, or the calf of any such cow, not his own, with intent to procure milk from such cow, without the consent of the owner, shall, on conviction, be fined not more than one hundred dollars, or be imprisoned in the county jail not more than three months, or both. Proof that any one penned or confined any cow or her calf not his own, shall be deemed prima facie evidence of an intent to procure milk in violation of this section.

HISTORY: Codes, 1880, § 1912; 1892, § 1187; 1906, § 1265; Hemingway's 1917, § 995; 1930, § 1023; 1942, § 2255.

RESEARCH REFERENCES

Am. Jur.

50 Am. Jur. 2d, Larceny § 58.

CJS.

52B C.J.S., Larceny §§ 12, 79, 80, 82.

§ 97-17-57. Repealed.

Repealed by Laws, 1985, ch. 316, § 1, eff from and after July 1, 1985.

§ 97-17-57. [Codes, 1942, § 2244.5; Laws, 1968, ch. 346, § 1; Laws, 1972, ch. 313, § 1]

Editor's Notes — Former § 97-17-57 was entitled: Larceny; stealing fish from fish farmers.

§ 97-17-58. Repealed.

Repealed by Laws, 2003, ch. 403, § 2, eff from and after July 1, 2003.

§ 97-17-58. [Laws, 1974, ch. 463, eff from and after passage (approved March 28, 1974).]

Editor's Notes — Former § 97-17-58 established penalties for the theft of crab pots.

§ 97-17-59. Larceny; stealing timber; restitution.

(1) Any person who shall knowingly, willfully and feloniously take, steal and carry away from the lands of another any merchantable timber on the property of another, of the value of less than Two Hundred Fifty Dollars ($250.00), whether such timber is growing, standing or lying on the lands, shall be guilty of a misdemeanor; and upon conviction thereof, shall be punished by a fine of not less than Two Hundred Dollars ($200.00) nor more than Five Hundred Dollars ($500.00), or by imprisonment in the county jail for a term of not less than thirty (30) days nor more than one hundred (100) days, or both, in the discretion of the court.

(2) Any person who shall knowingly, willfully and feloniously take, steal and carry away from the lands of another any merchantable timber on the property of another, of the value of Two Hundred Fifty Dollars ($250.00) or more, whether such timber is growing, standing, or lying on the lands, shall be guilty of a felony; and upon conviction thereof, shall be punished by a fine of not less than One Thousand Dollars ($1,000.00) nor more than Five Thousand Dollars ($5,000.00), or by imprisonment in the Penitentiary for a term of not less than one (1) year nor more than five (5) years, or both, in the discretion of the court.

(3) In addition to any such fine or imprisonment which may be imposed upon a convicted individual, the court shall order that restitution be made to the owner of any such stolen timber. The measure for restitution in money shall be the amount of the actual financial loss to the owner of the timber, including any loss of income, any court costs, expert fees and attorney's fees incurred by the owner to recover the loss and any other costs incurred by the owner as a result of actions in violation of subsections (1) and (2) of this section. The value of the timber shall be calculated by the fair market value of the timber at the time of the loss.

HISTORY: Codes, 1942, § 2386.5; Laws, 1954, ch. 221, §§ 1, 2(¶¶ 1, 2); Laws, 2000, ch. 355, § 1; Laws, 2004, ch. 419, § 3, eff from and after July 1, 2004.

Cross References — Tampering with timber, etc., to injure owner, see §§ 97-3-89 et seq.

Cutting or rafting of timber on state lands, see § 97-7-65.

Cutting or rafting of timber on the lands of another, see § 97-17-81.

Statute of limitations for larceny of timber, see § 99-1-5

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

JUDICIAL DECISIONS

ANALYSIS

1. Evidence of value.
2. Evidence held sufficient.
3. Intent.
4. Jury instructions.
5. Double jeopardy.

1. Evidence of value.

Where defendant's logger testified that he carried logs from the victim's property to mills and that the timber sold for approximately $ 21,000, the victim's failure to assign value to the stolen timber was irrelevant, as the evidence established a timber value in excess of $ 250. Chisolm v. State, 856 So. 2d 681, 2003 Miss. App. LEXIS 868 (Miss. Ct. App. 2003).

2. Evidence held sufficient.

Evidence was sufficient to convict defendant of timber theft because he used his coconspirators and an unwitting timber company to steal the victim's timber; defendant was guilty of the asportation as if he had taken the timber with his own hands because the company harvested the timber only after the coconspirators showed its agents the victim's land, falsely represented one of them owned the land, and accepted money in exchange for the right to harvest the timber. Terrell v. State, 237 So. 3d 717, 2018 Miss. LEXIS 1 (Miss. 2018).

Defendant's indictment for violating Miss. Code Ann. § 97-17-59(2) was not fatally defective because the use of the term "harvest" in the indictment was an adequate replacement for the term "carried away." Pollard v. State, 932 So. 2d 82, 2006 Miss. App. LEXIS 477 (Miss. Ct. App. 2006).

There was no substantial doubt as to which statute applied to defendant's case, Miss. Code Ann. § 97-17-59(2) or Miss. Code Ann. § 97-17-81, because the inclusion in defendant's indictment of the phrase "wilfully, unlawfully, and feloniously," and the inclusion of the value of the stolen timber, $1,226, made it apparent that defendant was charged pursuant to the felony statute; the indictment also alleged a "felonious" intent on defendant's part. Pollard v. State, 932 So. 2d 82, 2006 Miss. App. LEXIS 477 (Miss. Ct. App. 2006).

Where there was evidence that defendant ignored the victim's clear withholding of permission to cut timber, that he removed the timber, and there was testimony and documentary evidence of the timber's value, the trial court properly denied defendant's motion for directed verdict; his conviction was not contrary to the overwhelming weight of the evidence. Chisolm v. State, 856 So. 2d 681, 2003 Miss. App. LEXIS 868 (Miss. Ct. App. 2003).

3. Intent.

Defendant's conviction of larceny of timber under Miss. Code Ann. § 97-17-59(2) was reversed because use of the word "or" instead of "and" in jury instruction allowed him to be convicted upon proof that he merely cut the property owner's timber or authorized his employees to cut her timber; such a showing alone would be insufficient to sustain a conviction of timber larceny, as the instruction did not account for other elements of the crime, such as intent. Pollard v. State, 932 So. 2d 82, 2006 Miss. App. LEXIS 477 (Miss. Ct. App. 2006).

Victim's testimony that he denied giving permission to anybody to cut timber in the area where defendant had done so was sufficient to prove that defendant had the requisite intent, even though defendant testified that he had permission; the credibility of these witnesses was for the jury to determine. Chisolm v. State, 856 So. 2d 681, 2003 Miss. App. LEXIS 868 (Miss. Ct. App. 2003).

4. Jury instructions.

Trial court properly refused to instruct the jury that defendant had to personally carry away the timber to be guilty of timber theft because that was not the law; the trial court was right to instruct that defendant was guilty of timber theft if the jury found by use of the artifice and false documents defendant did take, steal, and carry away the merchantable timber. Terrell v. State, 237 So. 3d 717, 2018 Miss. LEXIS 1 (Miss. 2018).

5. Double jeopardy.

Defendant's sentences for conspiracy to commit false pretenses and conspiracy to commit timber theft punished him twice for the same illegal agreement, violating the constitutional prohibition against double jeopardy, because here were not two separate conspiracies but rather one conspiracy with two illegal objects, to steal the victim's timber and to obtain money from an unwitting timber company through false pretenses. Terrell v. State, 237 So. 3d 717, 2018 Miss. LEXIS 1 (Miss. 2018).

OPINIONS OF THE ATTORNEY GENERAL

A conviction for timber larceny under this section is a disqualifying crime pursuant to Section 241 of the Mississippi Constitution. Vowell, April 30, 1999, A.G. Op. #99-0186.

RESEARCH REFERENCES

Law Reviews.

Ogletree, A primer concerning industrial timber litigation with emphasis upon Mississippi law. 59 Miss. L. J. 387, Fall 1989.

§ 97-17-60. Payment for timber acquired for resale; penalties.

(1) Any person who acquires, with the consent of an owner, any timber product from that owner and who receives payment for the timber product shall, within thirty (30) days of such receipt, make payment in full to the owner.

(2) If the owner has not received payment within the required thirty (30) days, the owner shall notify the offender of his demand for payment at the offender's last known address by certified mail or by personal delivery of the written notice to the offender. The offender shall make payment in full within ten (10) days after the mailing or delivery of the written notice or the offender shall be in violation of this section.

(3) A written agreement signed by the owner providing for a means of payment contrary to this section shall constitute an affirmative defense.

(4) For the purposes of this section, the following terms shall have the meanings ascribed to them herein unless the context clearly indicates otherwise:

(a) "Timber product" means timber of all kinds, species or sizes, including, but not limited to, logs, lumber, poles, pilings, posts, blocks, bolts, cordwood and pulpwood, pine stumpwood, pine knots or other distillate wood, crossties, turpentine (crude gum), pine straw, firewood and all other products derived from timber or trees which have a sale or commercial value.

(b) "Owner" means any person, partnership, corporation, unincorporated association or other legal entity having any interest in any timber product, any land upon which a timber product is growing or any land from which a timber product has been removed.

(5) Whoever violates this section, upon conviction thereof, when the value of the timber product is Five Hundred Dollars ($500.00) or less, shall be fined not more than One Thousand Dollars ($1,000.00), or imprisoned for not more

than one (1) year, or both. When the value of the timber product is more than Five Hundred Dollars ($500.00), the violator, upon conviction thereof, shall be fined not more than Five Thousand Dollars ($5,000.00), or imprisoned for not more than ten (10) years, or both.

HISTORY: Laws, 2004, ch. 419, § 2, eff from and after July 1, 2004.

§ 97-17-61. Larceny; taking and carrying away certain animals or motor vehicles not amounting to larceny.

Any person who shall, without the consent of the owner or his agent, take away any horse, mare, gelding, mule, jack, jennet, sheep, cow, bull, ox, hog, or other livestock or dog, or automobile, truck or other motor vehicle, where such taking and carrying away shall not amount to larceny, shall upon conviction, be fined not exceeding One Thousand Dollars ($1,000.00), or be imprisoned not exceeding one (1) year in the county jail, or both. A verdict of guilty of such taking and carrying away may be rendered under an indictment for larceny, if the evidence shall not warrant a verdict of guilty of larceny but shall warrant a conviction under this section. This section shall not apply to anyone who takes such property believing, in good faith, that he has a right to it. The court shall order any person convicted under this section to pay restitution for any damage caused to any property as a result of violating this section.

HISTORY: Codes, 1880, § 2911; 1892, § 1186; 1906, § 1264; Hemingway's 1917, § 994; 1930, § 1022; 1942, § 2254; Laws, 1940, ch. 239; Laws, 1996, ch. 544, § 3, eff from and after July 1, 1996.

Cross References — Brands, marks, and transporting cattle, see § 69-29-1.

JUDICIAL DECISIONS

1. In general.

Court erred in awarding summary judgment to a car dealership in plaintiff's suit for malicious prosecution because a jury could have reasonably found that there was no probable cause for the dealership's initiation of a criminal charge for unauthorized use of a motor vehicle; notwithstanding an agreement whereby plaintiff was to return a vehicle if she could not obtain financing, the vehicle at issue was nevertheless placed in her possession by the dealership. George v. W.W.D. Autos., Inc., 937 So. 2d 958, 2006 Miss. App. LEXIS 455 (Miss. Ct. App. 2006).

In a prosecution for larceny of a black Angus heifer belonging to another, the trial court erred in refusing a defense instruction based upon this section where the defendant presented evidence that he had accidentally struck the heifer with his automobile, that the animal had been killed with a gunshot to put it out of its misery, and that he and others had taken the carcass and had it cut, wrapped and divided four ways; since the defendant's proof tended to establish that there was no intent to appropriate the cow at any time before it was shot, thereby negating the crime of larceny, the trial judge in effect peremptorily instructed the jury to disregard the defendant's defense when he refused the requested instruction. Knowles v. State, 410 So. 2d 380, 1982 Miss. LEXIS 1867 (Miss. 1982).

Where the defendant admitted the wrongful taking of an automobile from a motor company lot, but claimed that he intended only to drive it around that night and then return it, and it was shown that he drove it only within the city limits even after he was given a ticket for driving without a license and tag, such evidence precluded a conviction of grand larceny, but rather indicated an act of trespass less than larceny, since it did not appear that the defendant intended to deprive the owner permanently. Slay v. State, 241 So. 2d 362, 1970 Miss. LEXIS 1337 (Miss. 1970).

Evidence failing to indicate that defendant intended to steal truck but at most established offense of trespass less than larceny, was insufficient to warrant conviction of grand larceny. Ephram v. State, 204 Miss. 879, 35 So. 2d 708, 1948 Miss. LEXIS 415 (Miss. 1948).

Person who helped owner of cornfield catch and pen a hog, and after owner refused to pay 50¢ for the hog's keep, paid owner of cornfield 50¢ for the hog and offered to turn it over to its owner upon payment of 50¢, did not violate this section [Code 1942, § 2254]. Husbands v. State, 112 Miss. 17, 72 So. 836, 1916 Miss. LEXIS 53 (Miss. 1916).

Not larceny where defendant directed by owner to take a certain animal took another by mistake. Barnes v. State, 98 Miss. 458, 53 So. 956, 1910 Miss. LEXIS 83 (Miss. 1910).

RESEARCH REFERENCES

ALR.

Automobiles: elements of offense defined in "joyriding" statutes. 9 A.L.R.3d 633.

Asportation of motor vehicle as necessary element to support charge of larceny. 70 A.L.R.3d 1202.

Admissibility of photographs of stolen property. 94 A.L.R.3d 357.

Cat as subject of larceny. 55 A.L.R.4th 1080.

Am. Jur.

50 Am. Jur. 2d, Larceny §§ 54, 55.

2 Am. Jur. Trials, Investigating Particular Crimes, §§ 16-18 (automobile thefts).

§ 97-17-62. Larceny; theft of rental property.

(1)(a) It is unlawful to obtain custody of personal property or equipment by trick, deceit, fraud or willful false representation with intent to defraud the owner or any person in lawful possession of the personal property or equipment.

(b) It is unlawful to hire or lease personal property or equipment from any person who is in lawful possession of the personal property or equipment with intent to defraud that person of the rental due under the rental agreement.

(c) It is unlawful to abandon or willfully refuse to redeliver personal property as required under a rental agreement without the consent of the lessor or the lessor's agent with intent to defraud the lessor or the lessor's agent.

(d) A person who violates this subsection (1) shall be guilty of a misdemeanor, punishable as provided in Section 97-17-43, unless the value of the personal property or equipment is of a value of One Thousand Dollars ($1,000.00) or more; in that event the violation constitutes a felony, and shall be punished based on the property involved according to the schedule in Section 97-17-41.

(2)(a) In prosecutions under this section, the following acts are prima facie evidence of fraudulent intent: obtaining the property or equipment under false pretenses; absconding without payment; or removing or attempting to remove the property or equipment from the county without the express written consent of the lessor or the lessor's agent.

(b) Demand for return of overdue property or equipment and for payment of amounts due may be made personally, by hand delivery, or by certified mail, return receipt requested, to the lessee's address shown in the rental contract.

(c) In a prosecution under subsection (1)(c):

(i) Failure to redeliver the property or equipment within five (5) days after hand delivery to or return receipt from the lessee is prima facie evidence of fraudulent intent. Notice that is returned undelivered after mailing to the address given by the lessee at the time of rental shall be deemed equivalent to return receipt from the lessee.

(ii) Failure to pay any amount due which is incurred as the result of the failure to redeliver property after the rental period expires is prima facie evidence of fraudulent intent. Amounts due include unpaid rental for the time period during which the property or equipment was not returned, and include the lesser of the cost of repairing or replacing the property or equipment, as necessary, if it has been damaged or not returned.

HISTORY: Laws, 2007, ch. 489, § 1; Laws, 2014, ch. 457, § 19, eff from and after July 1, 2014.

Cross References — Larceny under lease or rental agreement, see § 97-17-64.

§ 97-17-63. Larceny; tenants in common.

Any tenant in common of personal property, or person who is in any manner interested in any such property in which any other person has an interest, who shall sell, give away, conceal, or in any way convert or dispose of such property, with intent to defraud his cotenant or other person interested in such property, shall be punished as if he had committed larceny of such property of the value of the interest of his cotenant or other person interested in such property.

HISTORY: Codes, 1880, § 2913; 1892, § 1188; 1906, § 1266; Hemingway's 1917, § 996; 1930, § 1024; 1942, § 2256.

Cross References — Affidavit for attachment against person unlawfully converting or disposing of property, etc., see § 11-33-9.
Grand larceny, see § 97-17-41.
Petit larceny, see § 97-17-43.

RESEARCH REFERENCES

Am. Jur.
50 Am. Jur. 2d, Larceny §§ 87 et seq.

CJS.
52B C.J.S., Larceny §§ 12, 63, 79, 80, 82.

§ 97-17-64. Larceny; under lease or rental agreement.

(1) A person who obtains personal property of another under a lease or rental agreement is guilty of theft if he exercises unlawful or unauthorized control over the property with purpose to deprive the owner thereof. As used in this section, the word "deprive" means to withhold property of another permanently or for so extended a period that a significant portion of its economic value, or the use or benefit thereof, is lost to the owner; or to withhold the property with intent to restore it to the owner only upon payment of a reward or other compensation; or to conceal, abandon or dispose of the property so as to make it unlikely that the owner will recover it; or to sell, give, pledge, or otherwise transfer any interest in the property.

(2) It shall be prima facie evidence of purpose to deprive when a person:

(a) In obtaining such property presents identification or information which is materially false, fictitious, misleading or not current, with respect to such person's name, address, place of employment, or any other material matter; or

(b) Fails to return such property to the owner or his representative within ten (10) days after proper notice following the expiration of the term for which such person's use, possession or control of the property is authorized; or

(c) Fails to contact the owner or his representative to make arrangements to return such property within ten (10) days after proper notice following the expiration of the term for which such person's use, possession or control of such property is authorized.

(3) For the purpose of this section, "proper notice" means either actual notification as may be otherwise proven beyond a reasonable doubt or a written demand for return of the property mailed to the defendant, which satisfies the following procedure:

(a) The written demand must be mailed to the defendant by certified or registered mail with return receipt attached, which return receipt by its terms must be signed by the defendant personally and not by his representative;

(b) The written demand must be mailed to the defendant at either the address given at the time he obtained the property or the defendant's last-known address if later furnished in writing by the defendant to the owner or his representative; and

(c) The return receipt bearing the defendant's signature must be returned to the owner or his representative.

(4) It shall be an affirmative defense to prosecution under this section that:

(a) The defendant was unaware that the property was that of another; or

(b) The defendant acted under an honest claim of right to the property involved or that he had a right to acquire or dispose of it as he did; or

(c) The defendant was physically incapacitated and unable to request or obtain permission of the owner to retain the property; or

(d) The property was in such a condition, through no fault of the defendant, that it could not be returned within the requisite time after receipt of proper notice.

(5) Any person convicted of the offense of theft under this section shall be:

(a) Guilty of a misdemeanor when the value of the personal property is less than One Thousand Dollars ($1,000.00) and may be punished by a fine of not more than Two Hundred Fifty Dollars ($250.00), or by imprisonment in the county jail for a term of not more than six (6) months, by both such fine and imprisonment if the court finds substantial and compelling reasons why the offender cannot be safely and effectively supervised in the community, is not amenable to community-based treatment, or poses a significant risk to public safety. If such a finding is not made, the court shall suspend the sentence of imprisonment and impose a period of probation not exceeding one (1) year or a fine not exceeding Two Hundred Fifty Dollars ($250.00), or both. Any person convicted of a third or subsequent offense under this subsection where the value of the property is not less than Five Hundred Dollars ($500.00), shall be imprisoned in the Penitentiary for a term not exceeding three (3) years or fined an amount not exceeding One Thousand Dollars ($1,000.00); or

(b) Guilty of a felony when the value of the personal property is One Thousand Dollars ($1,000.00) or more and punished by a fine of not more than One Thousand Dollars ($1,000.00), or by imprisonment in the State Penitentiary for a term of not more than five (5) years, or by both such fine and imprisonment.

HISTORY: Laws, 1987, ch. 352; Laws, 2014, ch. 457, § 20, eff from and after July 1, 2014.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

RESEARCH REFERENCES

CJS.
52B C.J.S., Larceny § 68.

§ 97-17-65. Looting.

(1) A person commits looting when he knowingly without authority of law or of the owner enters any home or dwelling, or upon any premises of another, or enters any commercial, mercantile, business or industrial building, plant or establishment, in which a normal security of property is not present by virtue of a hurricane, fire or vis major of any kind or by virtue of a riot, mob, or other human agency and obtains or exerts control over or injures or removes property of the owner.

(2) Any person who commits looting shall be guilty of a felony and, upon conviction, such person shall be punished by imprisonment in the penitentiary

for a period not to exceed fifteen (15) years or by a fine not to exceed ten thousand dollars ($10,000.00), or both such fine and imprisonment.

(3) The fact that a person may be subject to prosecution under this section shall not bar his prosecution or punishment under the statutes relating to larceny or burglary, or under any other statute or ordinance to the extent that such would otherwise be permitted in the absence of this section.

HISTORY: Codes, 1942, § 2257.5; Laws, 1968, ch. 348, §§ 1-3, eff from and after passage (approved July 11, 1968).

Cross References — Larceny, see §§ 97-17-41 et seq.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

OPINIONS OF THE ATTORNEY GENERAL

The term "normal security" is defined according to its common and ordinary acceptation and meaning. It would remain a fact question in each case as to what the meaning of normal security might include. Dunagan, Apr. 6, 2006, A.G. Op. 06-0031.

Since one convicted of the crime of looting may or may not have taken property, looting does not necessarily constitute theft and is not a disenfranchising crime. Loftin, Sept. 6, 2006, A.G. Op. 06-0386.

RESEARCH REFERENCES

Am. Jur.

13 Am. Jur. Trials, Defending Minor Felony Cases §§ 1 et seq.

§ 97-17-67. Malicious mischief.

(1) Every person who shall maliciously or mischievously destroy, disfigure, or injure, or cause to be destroyed, disfigured, or injured, any property of another, either real or personal, shall be guilty of malicious mischief.

(2) If the value of the property destroyed, disfigured or injured is One Thousand Dollars ($1,000.00) or less, it shall be a misdemeanor and may be punishable by a fine of not more than One Thousand Dollars ($1,000.00) or imprisonment in the county jail not exceeding twelve (12) months, or both if the court finds substantial and compelling reasons why the offender cannot be safely and effectively supervised in the community, is not amenable to community-based treatment, or poses a significant risk to public safety. If such a finding is not made, the court shall suspend the sentence of imprisonment and impose a period of probation not exceeding one (1) year or a fine of not more than One Thousand Dollars ($1,000.00), or both. Any person convicted of a third or subsequent offense under this subsection where the value of the property is not less than Five Hundred Dollars ($500.00), shall be imprisoned in the Penitentiary for a term not exceeding three (3) years or fined an amount not exceeding One Thousand Dollars ($1,000.00), or both.

(3) If the value of the property destroyed, disfigured or injured is in excess

of One Thousand Dollars ($1,000.00) but less than Five Thousand Dollars ($5,000.00), it shall be a felony punishable by a fine not exceeding Ten Thousand Dollars ($10,000.00) or imprisonment in the Penitentiary not exceeding five (5) years, or both.

(4) If the value of the property is Five Thousand Dollars ($5,000.00) or more but less than Twenty-five Thousand Dollars ($25,000.00), it shall be punishable by a fine of not more than Ten Thousand Dollars ($10,000.00) or imprisonment in the Penitentiary not exceeding ten (10) years, or both.

(5) If the value of the property is Twenty-five Thousand Dollars ($25,000.00) or more, it shall be punishable by a fine of not more than Ten Thousand Dollars ($10,000.00) or imprisonment in the Penitentiary not exceeding twenty (20) years, or both.

(6) In all cases restitution to the victim for all damages shall be ordered. The value of property destroyed, disfigured or injured by the same party as part of a common crime against the same or multiple victims may be aggregated together and if the value exceeds One Thousand Dollars ($1,000.00), shall be a felony.

(7) For purposes of this statute, value shall be the cost of repair or replacement of the property damaged or destroyed.

(8) Anyone who by any word, deed or act directly or indirectly urges, aids, abets, suggests or otherwise instills in the mind of another the will to so act shall be considered a principal in the commission of said crime and shall be punished in the same manner.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 7(2); 1857, ch. 64, art. 202; 1871, § 2709; 1880, § 2919; 1892, § 1209; 1906, § 1287; Hemingway's 1917, § 1019; 1930, § 1049; 1942, § 2281; Laws, 1962, ch. 319; Laws, 1968, ch. 357, § 1; Laws, 2003, ch. 434, § 1; Laws, 2009, ch. 379, § 2; Laws, 2014, ch. 457, § 21, eff from and after July 1, 2014.

Cross References — Reports of students charged with misdemeanors, see §§ 37-11-29 et seq.

Theft or destruction of court or other public records and papers, see § 97-9-3.

Alteration, destruction or concealment of will, see § 97-9-77.

Defacing or destroying public buildings, schools, churches, etc., see § 97-17-39.

Crime of looting, see § 97-17-65.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Sentence.

1. In general.

Circuit did not err in denying appellant's pro se motion for post-conviction relief because his sentence for malicious mischief was not illegal; Miss. Code Ann. § 99-19-81 mandated that the circuit court impose the maximum sentence prescribed by Miss. Code Ann. § 97-17-67. Sellers v. State, 167 So. 3d 268, 2015 Miss. App. LEXIS 315 (Miss. Ct. App. 2015).

Evidence that defendant jumped on the hood of the victim's car and kicked the fender, causing $729.12 in damages was sufficient to support a malicious mischief conviction. Shaw v. State, 139 So. 3d 79, 2013 Miss. App. LEXIS 662 (Miss. Ct. App. 2013).

Section 21-13-19, which gives a municipal court the authority to try misdemeanors and allows municipalities to incorporate all state misdemeanors as municipal violations, does not bar the State from prosecuting misdemeanors committed within municipal boundaries; the effect of § 21-13-19 is to allow more than one governmental entity to prosecute misdemeanors, as the statute simply grants municipalities the authority to make use of the legislature's classifications of misdemeanors; thus, a county circuit court had original jurisdiction over a prosecution for malicious mischief under this section, in spite of the defendant's argument that his violation constituted a municipal offense and that the case should have been heard by a municipal court. Collins v. State, 594 So. 2d 29, 1992 Miss. LEXIS 64 (Miss. 1992).

It is unnecessary for an indictment under this section [Code 1942, § 2281] to specify the value of the property destroyed or the monetary amount of the damage, for in this respect it is only necessary to show destruction or injury of property and its disfiguration. Cain v. State, 253 Miss. 368, 175 So. 2d 638, 1965 Miss. LEXIS 994 (Miss. 1965).

One maliciously injuring real property of another by tearing down and removing a fence therefrom is not guilty of malicious mischief. City of Greenville v. Laurent, 75 Miss. 456, 23 So. 185, 1897 Miss. LEXIS 139 (Miss. 1897).

It is not necessary under this statute [Code 1942, § 2281] to aver that the acts were wilfully done, "maliciously" is enough. Funderburk v. State, 75 Miss. 20, 21 So. 658, 1897 Miss. LEXIS 84 (Miss. 1897).

2. Sentence.

Appellant was not prejudiced by counsel's alleged failure to inform him that he would receive a mandatory five-year sentence because he acknowledged in the plea petition that the State would recommend a five-year sentence, and the circuit court informed him it was obligated to impose the maximum sentence under the statute. Sellers v. State, 167 So. 3d 268, 2015 Miss. App. LEXIS 315 (Miss. Ct. App. 2015).

RESEARCH REFERENCES

Am. Jur.

52 Am. Jur. 2d, Malicious Mischief and Related Offenses §§ 1, 3, 5, 7, 8, 22.

59 Am. Jur. 2d, Parent and Child §§ 85 et seq.

§ 97-17-68. Coin operated devices; description of offenses and imposition of penalties; prosecution under this section does not bar prosecution or punishment under other statutes.

(1) It shall be unlawful for any person: (a) to willfully open, enter, remove, break into or tamper with any parking meter, coin telephone or other coin-operated vending machine dispensing goods or services with the intent to commit a larceny therefrom; (b) to possess a key or device designed and intended by him to aid in the commission of larceny from any parking meter, coin telephone or other coin-operated vending machine dispensing goods or services; (c) to possess a drawing, print or mold of a key or device designed and intended by him to aid in the commission of larceny from any parking meter, coin telephone or other coin-operated vending machine dispensing goods or services; or (d) to break into or enter any parking meter, coin telephone or other coin-operated vending machine dispensing goods or services with the intent to steal therefrom.

(2) Any person who violates any provision of this section shall be punished upon the first conviction by imprisonment in the county jail or sentenced to hard labor for the county for a period of not more than thirty (30) days, or by a fine of not more than Two Hundred Dollars ($200.00), or by both such fine and imprisonment. Upon any subsequent conviction, such person shall be punished by imprisonment in the county jail for a period of not less than six (6) months nor more than one (1) year, or by a fine of not more than Five Hundred Dollars ($500.00), or by both such fine and imprisonment.

(3) The fact that a person may be subject to prosecution under this section shall not bar his prosecution or punishment under Section 97-17-67 relating to malicious mischief, under the statutes relating to larceny, or under any other statute or ordinance to the extent that such would otherwise be permitted in the absence of this section.

HISTORY: Laws, 1974, ch. 356, §§ 1, 2; Laws, 2009, ch. 379, § 1, eff from and after July 1, 2009.

RESEARCH REFERENCES

ALR.

Criminal prosecution based upon breaking into or taking money or goods from vending machine or other coin-operated machine. 45 A.L.R.3d 1286.

Criminal prosecutions for use of "blue box" or similar device permitting user to make long-distance telephone calls without incurring charges. 78 A.L.R.3d 449.

§ 97-17-69. Repealed.

Repealed by Laws, 1993, ch. 359, § 5, eff from and after July 1, 1993.

§ 97-17-69. [Codes, Hutchinson's 1848, ch. 64, art. 12, Title 4(72); 1857, ch. 64, art. 196; 1871, § 2657; 1880, § 2907; 1892, § 1181; 1906, § 1259; Hemingway's 1917, § 989; 1930, § 1017; 1942, § 2249]

Editor's Notes — Former § 97-17-69 provided for the crime of receiving stolen property. Similar provisions are now found in § 97-17-70.

§ 97-17-70. Receiving stolen property; dual charges of both stealing and receiving same property not to be brought against single defendant in same jurisdiction; penalties.

(1) A person commits the crime of receiving stolen property if he intentionally possesses, receives, retains or disposes of stolen property knowing that it has been stolen or having reasonable grounds to believe it has been stolen, unless the property is possessed, received, retained or disposed of with intent to restore it to the owner.

(2) The fact that the person who stole the property has not been convicted, apprehended or identified is not a defense to a charge of receiving stolen property.

(3)(a) Evidence that the person charged under this section stole the property that is the subject of the charge of receiving stolen property is not a defense to a charge under this section; however, dual charges of both stealing and receiving the same property shall not be brought against a single defendant in a single jurisdiction.

(b) Proof that a defendant stole the property that is the subject of a charge under this section shall be prima facie evidence that the defendant had knowledge that the property was stolen.

(4) Any person who shall be convicted of receiving stolen property which exceeds One Thousand Dollars ($1,000.00) or more, but less than Five Thousand Dollars ($5,000.00) in value shall be punished by imprisonment in the custody of the State Department of Corrections for a term not exceeding five (5) years or by a fine of not more than Ten Thousand Dollars ($10,000.00), or both.

(5) Any person who shall be convicted of receiving stolen property which exceeds Five Thousand Dollars ($5,000.00) or more but less than Twenty-five Thousand Dollars ($25,000.00) in value shall be punished by imprisonment in the custody of the State Department of Corrections for a term not exceeding ten (10) years or by a fine of not more than Ten Thousand Dollars ($10,000.00), or both.

(6) Any person who shall be convicted of receiving stolen property which exceeds Twenty-five Thousand Dollars ($25,000.00) in value shall be punished by imprisonment in the custody of the State Department of Corrections for a term not exceeding twenty (20) years or by a fine of not more than Ten Thousand Dollars ($10,000.00), or both.

(7) Any person who shall be convicted of receiving stolen property which does not exceed One Thousand Dollars ($1,000.00) in value may be punished by imprisonment in the county jail for not more than six (6) months or by a fine of not more than One Thousand Dollars ($1,000.00), or both if the court finds substantial and compelling reasons why the offender cannot be safely and effectively supervised in the community, is not amenable to community-based treatment, or poses a significant risk to public safety. If such a finding is not made, the court shall suspend the sentence of imprisonment and impose a period of probation not exceeding one (1) year or a fine of not more than One Thousand Dollars ($1,000.00), or both. Any person convicted of a third or subsequent offense under this subsection where the value of the property is not less than Five Hundred Dollars ($500.00), shall be imprisoned in the Penitentiary for a term not exceeding three (3) years or fined an amount not exceeding One Thousand Dollars ($1,000.00), or both.

HISTORY: Laws, 1993, ch. 359, § 1; Laws, 2003, ch. 499, § 4; Laws, 2005, ch. 511, § 1; Laws, 2007, ch. 437, § 1; Laws, 2014, ch. 457, § 22, eff from and after July 1, 2014.

Editor's Notes — Similar provisions were formerly found in repealed § 97-17-69.

Cross References — Unlawful purchasing of derelict property from finder, see § 89-17-27.

Junk dealers required to keep records of copper, aluminum, and railroad track materials purchases, see § 97-17-71.

Receiving things of value obtained by fraudulent use of credit card, see § 97-19-27.

Buying or receiving embezzled goods, see § 97-23-23.

Search warrant for stolen goods, see § 99-15-11.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony or misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

ANALYSIS

I. UNDER CURRENT LAW.

1. In general.
2. Evidence.
3. Sufficiency of evidence.
4. Instructions.
5. Stealing and receiving the same property.

6.-14. [Reserved for future use.]

II. UNDER FORMER § 97-17-69.

15. In general.
16. Guilty knowledge.
17. Accessories.
18. Inference from possession of stolen goods.
19. Indictment.
20. Evidence.
21. —Sufficiency.
22. Instructions.
23. Miscellaneous.

I. UNDER CURRENT LAW.

1. In general.

Defendant received an erroneous sentence of ten years, because the maximum allowable sentence for defendant's offense of receiving stolen property valued at less than $5,000 was five years. Patrick v. State, 269 So. 3d 460, 2018 Miss. App. LEXIS 316 (Miss. Ct. App. 2018), cert. denied, 260 So. 3d 796, 2019 Miss. LEXIS 10 (Miss. 2019).

After the defendant committed his crime but before he was sentenced, Chapter 457, Laws of 2014, amended both the elements of the crime of receiving stolen property and the applicable penalties. The amendments to the elements of the crime cannot be retroactively applied, and since the amendments to the elements of the crime and the amendments to the punishments are inextricably interrelated, the amendments to the punishments also cannot be applied retroactively. Wilson v. State, 198 So. 3d 408, 2016 Miss. App. LEXIS 149 (Miss. Ct. App.), cert. denied, 202 So. 3d 616, 2016 Miss. LEXIS 368 (Miss. 2016).

The offense defined in the amended version of Miss. Code Ann. § 97-17-70(4) is not the same offense defined in the prior version simply because it is set out in the same place under the same heading. There is no longer one felony offense of receiving stolen property; there are now three different and new felony offenses, each of which requires proof that the defendant received property within a different range of dollar values. Miss. Code Ann. § 99-19-33 (Rev. 2015) applies and permits sentencing under the amended version of the statute for an offense which was a crime under pre-existing law. Wilson v. State, 198 So. 3d 408, 2016 Miss. App. LEXIS 149 (Miss. Ct. App.), cert. denied, 202 So. 3d 616, 2016 Miss. LEXIS 368 (Miss. 2016).

Jury instruction on receiving stolen property in a case relating to burglary and larceny of a church was properly denied because no reasonable juror could have found defendant guilty of this offense due to defendant's admission, a co-defendant's testimony, and the items found in defendant's home during the execution of a search warrant. Dimaio v. State, 951 So. 2d 581, 2006 Miss. App. LEXIS 782 (Miss. Ct. App. 2006).

The statutory requirements for the crime of receiving stolen property are:(1) the possession, receipt, retention or disposition of personal property;(2) stolen from someone else; and (3) with knowledge or a reasonable belief that the property is stolen. Washington v. State, 726 So. 2d 209, 1998 Miss. App. LEXIS 1030 (Miss. Ct. App. 1998).

2. Evidence.

Although the trial court erred in admitting a photograph displaying damage to a stolen pickup truck into evidence, the error was harmless. Since the jury heard testimony from two witnesses in regard to the damage depicted in the photograph, the photograph itself did not affect the final result of the case. Taylor v. State, 179 So. 3d 1237, 2015 Miss. App. LEXIS 590 (Miss. Ct. App. 2015).

Because defendant was found in possession of a stolen vehicle after attempting to conceal his identity from law enforcement, and he offered no explanation of how he came into possession of the vehicle, nor did he ever allege at trial that the vehicle was borrowed, the trial court's denial of defendant's motion for a new trial did not amount to an abuse of discretion as the verdict was not against the overwhelming weight of the evidence. Kelly v. State, 124 So. 3d 717, 2013 Miss. App. LEXIS 399 (Miss. Ct. App. 2013).

Certificate of title and a bill of sale that were produced to the State during discovery were admissible into evidence because they were relevant under Miss. R. Evid. 401, as a reasonable juror could conclude that, because defendant produced the fraudulent documents during discovery, he knew the vehicle was stolen. In addition, to authentic the documents, the State had only to show that the documents were what the State claimed them to be, and defendant offered no objection to their authenticity. Hayden v. State, 972 So. 2d 525, 2007 Miss. LEXIS 646 (Miss. 2007).

Evidence of the unexplained possession of recently stolen goods by one charged with unlawfully receiving them is admissible in a prosecution for the offense and is a strong circumstance to be considered with all the evidence in the case on the question of guilty knowledge. Washington v. State, 726 So. 2d 209, 1998 Miss. App. LEXIS 1030 (Miss. Ct. App. 1998).

3. Sufficiency of evidence.

Evidence that defendant purchased the truck for approximately half of its value, that the bill of sale was handwritten and listed a dealership not the individual defendant paid as the seller, and that defendant encountered multiple discrepancies in the truck's paperwork that made renewing the car's registration problematic was sufficient to support defendant's conviction for receipt of stolen property. Harris v. State, — So. 3d —, 2020 Miss. App. LEXIS 499 (Miss. Ct. App. Aug. 25, 2020).

State never asked the owner of the vehicle about its value and the detective's testimony lacked any rationally based perception of the vehicle, as he never saw the vehicle and admitted he did not know the vehicle's value; the evidence was insufficient to prove that the vehicle was worth between $ 1,000 and $ 5,000 and defendant's conviction of receiving stolen under Miss. Code Ann. § 97-17-70(4) could not stand. The evidence was sufficient to convict defendant of misdemeanor receipt of stolen property and the case was remanded for resentencing. Grant v. State, 281 So. 3d 993, 2019 Miss. App. LEXIS 187 (Miss. Ct. App. 2019).

State of Mississippi failed to prove beyond a reasonable doubt that defendant was guilty of receiving stolen property because the evidence was insufficient to show that defendant knew that the four-wheeler which defendant sold in a controlled buy had been stolen as the State presented no evidence as to how defendant came into possession of the four-wheeler Patrick v. State, 269 So. 3d 460, 2018 Miss. App. LEXIS 316 (Miss. Ct. App. 2018), cert. denied, 260 So. 3d 796, 2019 Miss. LEXIS 10 (Miss. 2019).

Viewed in the light most favorable to the verdict, the appellate court could not say that the overwhelming weight of evidence was against the jury's decision to find defendant guilty of possession of stolen property. Accordingly, the trial court did not abuse its discretion in denying defendant's motion for a new trial. Taylor v. State, 179 So. 3d 1237, 2015 Miss. App. LEXIS 590 (Miss. Ct. App. 2015).

Evidence was sufficient evidence to find defendant guilty of receiving stolen property by intentional possession of stolen property because the skid steer was stolen; although defendant claimed to have never been in possession of the skid steer and that he had no knowledge of how the owner of the tree service company obtained it, there was evidence that shortly after it was stolen, the owner of the tree service company bought the $52,000 skid steer from defendant for $5,000 and two used vehicles; and, based on the testimony of the owner of the tree service company, a jury could infer that defendant possessed, retained, or disposed of the skid steer, and that he knew or had reasonable grounds to believe that it had been stolen. Taylor v. State, 167 So. 3d 1239, 2014 Miss. App. LEXIS 397 (Miss. Ct. App. 2014), rev'd, 167 So. 3d 1143, 2015 Miss. LEXIS 351 (Miss. 2015).

Evidence was sufficient to support defendant's conviction for possession of stolen property because he knew or should have known that the vehicle was stolen as he misrepresented to law enforcement his identity during a roadblock, and he was driving with an unregistered license plate. Kelly v. State, 124 So. 3d 717, 2013 Miss. App. LEXIS 399 (Miss. Ct. App. 2013).

Appellate court agreed with the State that the value of the stolen car was proven at trial where the defense introduced a purported bill of sale for the vehicle which defendant was driving; the bill of sale listed the purchase price at $1,500, which was more than the $250 needed on the charge of possession of stolen property. Hubbard v. State, 938 So. 2d 287, 2006 Miss. App. LEXIS 163 (Miss. Ct. App.), cert. denied, 937 So. 2d 450, 2006 Miss. LEXIS 543 (Miss. 2006).

Defendant contended that the evidence showed that he stole the motorcycle and trailer and thus the evidence was insufficient to sustain his conviction of receiving stolen property under Miss. Code Ann. § 97-17-70; however, if the statute no longer required that there be evidence that someone else stole the property, then obviously the issue had no merit. Ezell v. State, 956 So. 2d 315, 2006 Miss. App. LEXIS 920 (Miss. Ct. App. 2006).

Evidence was sufficient to enable a reasonable juror to conclude that defendant knew or reasonably should have known that the motorcycle and trailer were stolen property because, inter alia: (1) on February 14, 2004, the owners told him that their motorcycle and trailer had been stolen; and (2) defendant had been to the owners' house and from where he was standing in their driveway could see the motorcycle and trailer, so he was familiar with them; thus, the evidence was sufficient to sustain defendant's conviction for receipt of stolen property. Ezell v. State, 956 So. 2d 315, 2006 Miss. App. LEXIS 920 (Miss. Ct. App. 2006).

Although the sole evidence of the value of the stolen motorcycle and trailer was their original purchase prices, which were, respectively, $5,600 in 2000 and $500 plus a trailer in trade, a reasonable jury could have inferred that the motorcycle and trailer had market values in excess of $500 at the times of their knowing possession by defendant; thus, the evidence was sufficient to sustain defendant's conviction of two counts of receiving stolen property valued in excess of $500. Ezell v. State, 956 So. 2d 315, 2006 Miss. App. LEXIS 920 (Miss. Ct. App. 2006).

Sufficient evidence supported defendant's conviction for receiving stolen property, a truck, in violation of Miss. Code Ann. § 97-17-70(1) as defendant bought the $35,000 truck for $12,000, was not given any paperwork, bill of sale or title, and did not purchase a tag or insurance for the truck. Long v. State, 933 So. 2d 1056, 2006 Miss. App. LEXIS 532 (Miss. Ct. App. 2006).

Where defendant was charged with possession of stolen property, the jury was presented with absolutely no evidence of the stolen truck's value. There was insufficient evidence to support a felony conviction for possession of stolen property pursuant to Miss. Code Ann. § 97-17-70(3); instead, defendant was guilty of misdemeanor possession of stolen property. Rogers v. State, 920 So. 2d 550, 2006 Miss. App. LEXIS 78 (Miss. Ct. App. 2006).

Defendant's motion for judgment notwithstanding the verdict or, alternatively, a new trial, was properly denied, as his argument that he did not "knowingly" receive the stolen property, just after the subject burglary, was controverted by the testimony of the three men who did commit the burglary, and the jury verdict was not against the overwhelming weight of the evidence given the identity of the stolen items and the testimony of said three men, who stated that the stolen items were traded to defendant for marijuana. In sum, the jury was presented with two versions of what happened, and found the State's version more credible, and accordingly, allowing the verdict to stand did not constitute an unconscionable injustice. Primas v. State, 915 So. 2d 1095, 2005 Miss. App. LEXIS 969 (Miss. Ct. App. 2005).

Defendant's conviction for receiving stolen goods in violation of Miss. Code Ann. § 97-17-70 was vacated because defendant could not be convicted of receiving stolen goods, where the evidence showed she was guilty of larceny of the goods in question. There was no evidence that defendant received the gun from a third person who had stolen it, rather, the evidence showed that the weapon belonged to her ex-husband, that it had been reported stolen, and that she was required to return it if she found it in her home after their divorce, but that she had not yet returned it. Young v. State, 908 So. 2d 819, 2005 Miss. App. LEXIS 445 (Miss. Ct. App. 2005).

State proved that defendant intentionally possessed, received, retained or disposed of stolen property knowing that it had been stolen where defendant's having the stolen property in his personal automobile, his selling it far below market price, and the secretive way in which he secured a buyer provided the jurors reason to find defendant had guilty knowledge sufficient to support guilt; since defendant provided no explanation of his possession of the recently stolen goods, this would lead a reasonable person to believe the property was stolen. Russell v. State, 844 So. 2d 506, 2003 Miss. App. LEXIS 376 (Miss. Ct. App. 2003).

Evidence was insufficient to establish that a stolen stereo and a stolen flashlight received by the defendant had a value of more than $250 so that the evidence only supported a conviction under subsection (4), rather than subsection (3); the owner of the stolen property had testified that he paid $600 for the stereo two and a half years before the theft and $110 for the flashlight a year prior to the crime and that both items were still in good condition, but there was no testimony from anyone familiar with the market value of these items. Williams v. State, 763 So. 2d 186, 2000 Miss. App. LEXIS 99 (Miss. Ct. App. 2000).

Circumstantial evidence, when viewed in the light most favorable to the state, supported the jury verdict finding the defendant guilty of receiving stolen property and conspiracy to receive stolen property where the state showed that a pattern existed wherein vehicle identification number plates from older vehicles were placed onto newer stolen vehicles to prevent recovery by the lawful owner. Washington v. State, 726 So. 2d 209, 1998 Miss. App. LEXIS 1030 (Miss. Ct. App. 1998).

4. Instructions.

Trial court properly allowed a jury instruction which informed the jury that proof defendant stole the property in question was prima facie evidence that defendant knew that the property was stolen property. Wilson v. State, 194 So. 3d 855, 2016 Miss. LEXIS 262 (Miss. 2016).

In a receiving stolen property case, the trial court properly allowed a jury instruction which informed the jury that the State was not required to disprove defendant's alibi but rather that the State had to prove defendant's guilt beyond a reasonable doubt. Wilson v. State, 194 So. 3d 855, 2016 Miss. LEXIS 262 (Miss. 2016).

In a case involving burglary of a dwelling, defendant was not entitled to a jury instruction for a lesser non-included offense of receiving stolen property because the proper foundation was not laid where no evidence of the monetary value of a computer was presented. The indicted crime had no element of value. Smith v. State, 150 So. 3d 122, 2014 Miss. App. LEXIS 611 (Miss. Ct. App. 2014).

Because defendant was in possession of the stolen vehicle and an eyewitness testified that defendant had possessed the vehicle for at least three to four months prior to his arrest, there was direct evidence of the crime of possession of stolen property presented, and the trial court properly refused to give a two-theory jury instruction. Kelly v. State, 124 So. 3d 717, 2013 Miss. App. LEXIS 399 (Miss. Ct. App. 2013).

Trial judge did not err in denying defendant's request for lesser offense instructions on accessory after the fact and/or receiving stolen goods, Miss. Code Ann. §§ 97-17-70 and 97-1-5, as these lesser offenses were separate and distinct from those charged, and there was no evidentiary basis to support the requisite knowledge element for either instruction. Brazzle v. State, 13 So. 3d 810, 2009 Miss. LEXIS 339 (Miss. 2009).

In a case involving burglary of a business, defendant was not entitled to receive an instruction on misdemeanor receipt of stolen property under Miss. Code Ann. § 97-17-70(4) because the only evidence of the value of stolen property was offered by an owner, and he stated it was worth $3,500. Lindsey v. State, 990 So. 2d 270, 2008 Miss. App. LEXIS 545 (Miss. Ct. App. 2008).

5. Stealing and receiving the same property.

Reversal of defendant's conviction and rendering judgment in defendant's favor was appropriate because the charges against defendant for stealing and receiving the same property violated the statutory requirements as defendant was tried once in the same county for stealing and receiving the same property and was tried and acquitted of stealing the property. Thus, defendant could not be retried for receiving the property. Davis v. State, 162 So. 3d 805, 2015 Miss. LEXIS 215 (Miss. 2015).

Defendant's conviction for receiving stolen property had to be reversed because he was indicted and tried for the crimes of grand larceny and receiving stolen property and the receiving-stolen-property statute unequivocally told prosecutors not to indict a person for both stealing and receiving the same property against a single defendant in a single jurisdiction. Davis v. State, 162 So. 3d 828, 2014 Miss. App. LEXIS 99 (Miss. Ct. App. 2014), aff'd in part and rev'd in part, 162 So. 3d 805, 2015 Miss. LEXIS 215 (Miss. 2015).

6.-14. [Reserved for future use.]

II. UNDER FORMER § 97-17-69.

15. In general.

"Received" within the meaning of former § 97-17-69 is not limited to physical receipt. Receipt of stolen property is continuing conduct and includes handling thereafter; the act encompasses a "continuous course of receiving." Physical possession of the property is not required nor is exclusive control or dominion. It is adequate that the prosecution prove that the property was subject to the defendant's dominion and control. Thus, a defendant could be convicted of receiving stolen property where he aided others in their handling of stolen guns and substantially facilitated their continued dominion, control and ultimately, disposition of the guns, even though he never physically handled the guns and may never have possessed or controlled the guns. Davis v. State, 586 So. 2d 817, 1991 Miss. LEXIS 665 (Miss. 1991).

Under state's evidence showing that the defendant was present, aiding, abetting and participating in the theft of a combine, he should have been charged with grand larceny, and his conviction of receiving stolen property was improper, requiring reversal. Hentz v. State, 489 So. 2d 1386, 1986 Miss. LEXIS 2468 (Miss. 1986).

The statutes making the receiving of stolen goods a substantive offense are not intended to punish the thief by way of a double penalty but are directed against those who would make theft easy or profitable, and it is elementary that one who steals property cannot be convicted of receiving, concealing or aiding in concealing the property stolen. Anderson v. State, 232 So. 2d 364, 1970 Miss. LEXIS 1624 (Miss. 1970), overruled, Knowles v. State, 341 So. 2d 913, 1977 Miss. LEXIS 2283 (Miss. 1977), but see Knowles v. State, 341 So. 2d 913, 1977 Miss. LEXIS 2283 (Miss. 1977).

Where, pursuant to an offer by the defendant to theft victim to obtain the return of his stolen property for a payment of $200, the defendant met the victim in a place where he was under the observation of a police detective, produced the stolen articles and received the $200 which the detective took from defendant's hand when he placed him under arrest for receiving stolen property, there was no violation of defendant's right of privacy or right of due process, and a search warrant was unnecessary for the stolen articles were seen in defendant's possession prior to his arrest. Bennett v. State, 211 So. 2d 520, 1968 Miss. LEXIS 1268 (Miss. 1968), cert. denied, 393 U.S. 320, 89 S. Ct. 555, 21 L. Ed. 2d 515, 1969 U.S. LEXIS 2866 (U.S. 1969).

Where defendant was punished under a statute providing generally for punishment upon conviction of receiving stolen goods and the indictment charged receipt of stolen property alleging the value of $21, the defendant should have been sentenced under statute providing for punishment of such offense as petit larceny. Jones v. State, 215 Miss. 355, 60 So. 2d 805, 1952 Miss. LEXIS 573 (Miss. 1952).

Where defendant received a ring and put it in hiding, and thereby exercised control and dominion over it, this was sufficient under the terms of this section [Code 1942, § 2249] of receiving stolen property, even though the defendant had the ring in his manual possession for a very short time. Daniel v. State, 212 Miss. 223, 54 So. 2d 272, 1951 Miss. LEXIS 445 (Miss. 1951).

One who receives stolen car from thief, knowing it was stolen, and after assuring thief that if he would steal and bring him a good car defendant would receive and pay for it, is not guilty of larceny but of receiving stolen goods. Harper v. State, 207 Miss. 733, 43 So. 2d 183, 1949 Miss. LEXIS 383 (Miss. 1949).

This section [Code 1942, § 2249] and Code 1942, § 2538 are inconsistent, and since the legislature has seen fit to amend the latter section, such section is controlling as the last pronouncement of the legislature. Crowell v. State, 195 Miss. 427, 15 So. 2d 508, 1943 Miss. LEXIS 158 (Miss. 1943).

One convicted of receiving stolen property, consisting of an automobile tire of the value of less than $25, cannot be sentenced to a term in the state penitentiary but can only be punished as for petit larceny. Crowell v. State, 195 Miss. 427, 15 So. 2d 508, 1943 Miss. LEXIS 158 (Miss. 1943).

In view of the phrase "buy or receive," either the buying or receiving of property, knowing it to be stolen, is an offense under the statute. Claxton v. State, 185 Miss. 426, 187 So. 877, 1939 Miss. LEXIS 149 (Miss. 1939).

The distinction between a felony and a misdemeanor, dependent upon the value of the property involved, does not exist under the statute denouncing the offense of receiving stolen property. Claxton v. State, 185 Miss. 426, 187 So. 877, 1939 Miss. LEXIS 149 (Miss. 1939).

The value of the goods is immaterial under this section [Code 1942, § 2249] so that a person receiving stolen property knowing it to be such, in the manner denounced by the statute, is guilty of a felony, regardless of the value of such property; although the punishment, in the discretion of the court, may be a sentence to the penitentiary, or by imprisonment in the county jail, or by a fine named in the statute. Claxton v. State, 185 Miss. 426, 187 So. 877, 1939 Miss. LEXIS 149 (Miss. 1939).

16. Guilty knowledge.

The evidence was sufficient to present a jury issue on whether the defendant knew that property was stolen when he received it, where the defendant initially falsely denied to the arresting officer that he had received the property. Minter v. State, 583 So. 2d 973, 1991 Miss. LEXIS 463 (Miss. 1991).

The evidence was insufficient to establish that the defendant received stolen property with knowledge that it was stolen from another, where a stolen tool box and tools were recovered from the defendant's residence, the only proof relevant to the issue of guilty knowledge was testimony that the name of the farm from which the tools were stolen was located underneath the lid of the tool box and that a few of the tools left inside the box were marked with the name of one of the farm's employees, neither the tools nor the tool box were identified and introduced into evidence and therefore the jury did not have an opportunity to observe the nature of the markings, nothing in the official record suggested that the defendant could have read the markings, and there was no proof that any one or more of the tools contained in the box at the time it was recovered were a part and parcel of the tools originally stolen. Tubwell v. State, 580 So. 2d 1264, 1991 Miss. LEXIS 316 (Miss. 1991).

Defendant had been erroneously adjudicated delinquent child under Youth Court Act, for receipt of stolen property, where evidence offered by state showed only that defendant acquired possession of property from friend, and failed to prove either defendant's knowledge, or such circumstances that would constitute defendant's knowledge that property was stolen when defendant received it. In Interest of W.B., 515 So. 2d 1175, 1987 Miss. LEXIS 2911 (Miss. 1987).

Guilty knowledge is the gist of the offense of receiving stolen property. Whatley v. State, 490 So. 2d 1220, 1986 Miss. LEXIS 2499 (Miss. 1986).

Defendant was entitled to a reversal of his conviction under former § 97-17-69 of knowingly possessing stolen property, where the only proof the State presented that went to guilty knowledge was the argument that a postal receipt located in a storeroom in which some the stolen merchandise was located meant that the defendant must have known that the receipt represented stolen merchandise, in that the State failed to meet its burden of proof in establishing that the defendant knew that the merchandise was stolen. Thompson v. State, 457 So. 2d 953, 1984 Miss. LEXIS 1951 (Miss. 1984).

In order for the state to prove guilty knowledge, as required by this section in a prosecution for receiving stolen property, it must be established that defendant received the property under circumstances that would lead a reasonable person to believe it to be stolen. Ellett v. State, 364 So. 2d 669, 1978 Miss. LEXIS 2230 (Miss. 1978).

In order to be convicted for receiving stolen property it is not necessary that the accused personally witnessed the theft of the property in question, and if a person has knowledge from facts and circumstances which should convince a reasonable person that property has been stolen, in such situation the rule is that in a legal sense he knew the property was stolen. Brown v. State, 281 So. 2d 924, 1973 Miss. LEXIS 1501, 1973 Miss. LEXIS 1502 (Miss. 1973).

A judgment of conviction for receiving stolen property would be reversed where the testimony in the light most favorable to the state proved that the defendant had in his possession property that was recently stolen, but there was no evidence that he received it knowing it to have been stolen, for guilty knowledge is the gist of the offense of receiving stolen goods, and such knowledge must be both alleged and proved. Johnson v. State, 247 So. 2d 697, 1971 Miss. LEXIS 1445 (Miss. 1971).

Where the transaction between one charged with receiving stolen goods and another is such as to convince him, or should do so, that the articles were stolen, and he received them, he has knowledge to make him guilty of the offense charged. Bennett v. State, 211 So. 2d 520, 1968 Miss. LEXIS 1268 (Miss. 1968), cert. denied, 393 U.S. 320, 89 S. Ct. 555, 21 L. Ed. 2d 515, 1969 U.S. LEXIS 2866 (U.S. 1969).

Where the defendant knew where the ring was hidden and led the officers to it and gave it to them, and from this the jury would have been justified in finding that he had it in his possession and, there being no explanation as to why he had it in his possession, the statements to the officers and actions of defendant in the matter were sufficient to make an issue for decision by the jury on the question whether the defendant had knowledge of the stolen character of the property. Daniel v. State, 212 Miss. 223, 54 So. 2d 272, 1951 Miss. LEXIS 445 (Miss. 1951).

Word "knowing" means if person has information which should convince him property has been stolen. Francis v. State, 154 Miss. 176, 122 So. 372, 1929 Miss. LEXIS 121 (Miss. 1929).

By knowing them to be stolen is not meant that the defendant should have witnessed the theft. If the transaction is such as to convince him that the property was stolen and he receives it, he has knowledge to make him guilty. Sartorious v. State, 24 Miss. 602, 1852 Miss. LEXIS 110 (Miss. 1852); Frank v. State, 67 Miss. 125, 6 So. 842, 1889 Miss. LEXIS 31 (Miss. 1889).

17. Accessories.

A man who agreed to purchase goods which others intended to steal, who supplied a tractor to be used during the theft, who was not present during the commission of the crime, but who received stolen goods, could be convicted both as an accessory before the fact and as a receiver of stolen property (ovrlg Anderson v. State (Miss) 232 So. 2d 364, to the extent that it holds that an accessory before the fact to larceny not present at the actual caption and asportation of the stolen goods may not be convicted of knowingly receiving stolen property). Knowles v. State, 341 So. 2d 913, 1977 Miss. LEXIS 2283 (Miss. 1977).

Where it was shown that the defendant made arrangements for two cows to be clandestinely taken from the owner's property, the defendant was an accessory before the fact of larceny and thus was deemed and considered to be a principal and could not be convicted on a charge of receiving stolen property, knowing the same to have been stolen, notwithstanding that the defendant received the cows into his possession after the taking. Anderson v. State, 232 So. 2d 364, 1970 Miss. LEXIS 1624 (Miss. 1970), overruled, Knowles v. State, 341 So. 2d 913, 1977 Miss. LEXIS 2283 (Miss. 1977), but see Knowles v. State, 341 So. 2d 913, 1977 Miss. LEXIS 2283 (Miss. 1977).

One who steals property, or who is accessory before fact to grand larceny cannot be convicted of receiving, concealing, or aiding in concealing, the property stolen. Thomas v. State, 205 Miss. 653, 39 So. 2d 272, 1949 Miss. LEXIS 456 (Miss. 1949).

One who drives his car to seed house door, after midnight, and assists in loading fertilizer in car after two other persons have unlocked door, entered seed house and brought fertilizer to door, is actually present, aiding, abetting, and participating in theft of fertilizer and is a principal guilty of larceny and not of receiving stolen property. Thomas v. State, 205 Miss. 653, 39 So. 2d 272, 1949 Miss. LEXIS 456 (Miss. 1949).

Verdict finding defendant guilty as "accessor to the crime" was too vague, uncertain and indefinite to support a conviction of grand larceny, where the evidence pointed strongly to another who actually took the money, since it could not be ascertained whether the jury meant, by "accessor," that defendant was guilty as accessor before or after the larceny or that the defendant had received the money from another knowing it to have been stolen, and the defects of the verdict were not cured by statute pertaining to jeofails. McDougal v. State, 199 Miss. 39, 23 So. 2d 920, 1945 Miss. LEXIS 268 (Miss. 1945).

Son was not guilty of receiving stolen property above the value of $25 for helping his father in unloading the property and subsequently, after the theft was discovered and an investigation begun, in assisting his father in carrying the property to some nearby woods, notwithstanding that the father was guilty of such offense. Reese v. State, 198 Miss. 843, 23 So. 2d 694, 1945 Miss. LEXIS 259 (Miss. 1945).

18. Inference from possession of stolen goods.

In a prosecution for the offense of receiving stolen goods, it was reversible error for the state to obtain an instruction that if the evidence showed that the goods were found in the defendant's possession, and he gave no satisfactory explanation of such possession, there arose a presumption or inference of fact that the defendant received said goods knowing the same to have been lately taken, stolen and carried away. Mansfield v. State, 231 So. 2d 774, 1970 Miss. LEXIS 1601 (Miss. 1970).

Where circumstances warrant the conclusion that certain specified articles were stolen by another, and they are traced to the possession of the defendant under circumstance sufficient to make him believe they were stolen, this is sufficient to uphold a conviction, for knowledge that the articles were stolen does not mean that the defendant should personally have witnessed the theft. Bennett v. State, 211 So. 2d 520, 1968 Miss. LEXIS 1268 (Miss. 1968), cert. denied, 393 U.S. 320, 89 S. Ct. 555, 21 L. Ed. 2d 515, 1969 U.S. LEXIS 2866 (U.S. 1969).

Presumption of guilt held to arise from unexplained possession of goods recently stolen. Autman v. State, 126 Miss. 629, 89 So. 265, 1921 Miss. LEXIS 71 (Miss. 1921).

19. Indictment.

Defendant's indictment for receiving or possessing athletic wear which was stolen and exceeded a value of over $500 was sufficient to inform him as to the charges he was facing such that he had a fair opportunity to prepare a defense; it was of no instance that the indictment did not list each individual cap, sweatshirt, or pair of tennis shoes since the purpose of an indictment is to inform defendant, with some measure of certainty, as to the nature of the charges brought against him. Tucker v. State, 47 So. 3d 164, 2009 Miss. App. LEXIS 822 (Miss. Ct. App. 2009), rev'd, 47 So. 3d 135, 2010 Miss. LEXIS 573 (Miss. 2010).

Indictment which fairly tracked language of statute was not fatally defective in failing to allege ownership of allegedly stolen property, where defendant was convicted of receiving stolen property. Cummins v. State, 515 So. 2d 869, 1987 Miss. LEXIS 2876 (Miss. 1987), overruled, Morgan v. State, 703 So. 2d 832, 1997 Miss. LEXIS 260 (Miss. 1997).

It is unnecessary to allege any specific or unlawful intent in an indictment drawn under this section [Code 1942, § 2249] and following its wording. Chavers v. State, 215 So. 2d 880, 1968 Miss. LEXIS 1385 (Miss. 1968).

Where defendant was charged with unlawfully receiving six sacks of ammonium nitrate, indictment stating the words "six sacks of ammonium nitrate," was sufficient in designation and describing the property charged to have been stolen. Jones v. State, 215 Miss. 355, 60 So. 2d 805, 1952 Miss. LEXIS 573 (Miss. 1952).

Where an amendment to an indictment charging the receipt of stolen property did not vary the description but merely supplemented it, the amendment did not constitute a new case or a new description which would prevent the accused from understanding the offense with which he was charged. Jones v. State, 215 Miss. 355, 60 So. 2d 805, 1952 Miss. LEXIS 573 (Miss. 1952).

An indictment charging the receipt of stolen property, which described the property as a certain diamond ring, a better description of said diamond ring being to the grand jurors unknown, was sufficient. Daniel v. State, 212 Miss. 223, 54 So. 2d 272, 1951 Miss. LEXIS 445 (Miss. 1951).

The use of the words "buy or obtain" in an indictment, and the omission of the word "taken" in connection with the allegation that the defendant knew the property to be feloniously taken, sufficiently charged the offense under the statute, the words used in the indictment being synonymous with the words used in the statute. Claxton v. State, 185 Miss. 426, 187 So. 877, 1939 Miss. LEXIS 149 (Miss. 1939).

Indictment charging receiving stolen goods held sufficient without alleging unlawful intent. Renfrow v. State, 154 Miss. 523, 122 So. 750, 1929 Miss. LEXIS 165 (Miss. 1929).

Indictment for receiving stolen property, which fails to describe the property with the same particularity as is required in an indictment for larceny, is bad on demurrer. Wells v. State, 90 Miss. 516, 43 So. 610, 1907 Miss. LEXIS 79 (Miss. 1907).

20. Evidence.

False testimony of confessed thief, who was only witness who could establish elements of indictment which alleged that property was stolen, was of such importance that suppression of evidence with which defendant could have impeached thief's testimony denied defendant right to fair trial. Cummins v. State, 515 So. 2d 869, 1987 Miss. LEXIS 2876 (Miss. 1987), overruled, Morgan v. State, 703 So. 2d 832, 1997 Miss. LEXIS 260 (Miss. 1997).

Evidence of flight by defendant's coindictee and of alleged false statements made by coindictee to police concerning identity are inadmissible in trial of defendant on charge of receiving stolen property in absence of proof of conspiracy or concerted action. Van v. State, 477 So. 2d 1350, 1985 Miss. LEXIS 2267 (Miss. 1985).

Admission of testimony in a grand larceny prosecution of a witness, who had been indicted for receiving the property involved in the theft, which was not contradicted, was not improbable, and was reasonable, was not error, even though the witness testified that he had an agreement with the state that if he told the truth the charges against him would be dropped. Hoke v. State, 232 Miss. 329, 98 So. 2d 886, 1957 Miss. LEXIS 479 (Miss. 1957).

Defendant charged with receiving stolen goods cannot be convicted of that offense on evidence which shows that he is guilty of larceny of the goods received. Thomas v. State, 205 Miss. 653, 39 So. 2d 272, 1949 Miss. LEXIS 456 (Miss. 1949).

If two persons be jointly indicted and tried together for receiving stolen property, evidence of a separate receiving by one without the knowledge or consent of the other is not admissible over the objection of that other. Wheeler v. State, 76 Miss. 265, 24 So. 310, 1898 Miss. LEXIS 84 (Miss. 1898).

21. —Sufficiency.

Trial court's decision to deny defendant's motion for a directed verdict of acquittal during a receiving stolen property trial was proper because several witnesses testified that defendant attempted to cash a large amount of irregular money orders over the period of a few days; it was up to the jury to weigh this testimony with defendant's explanation of events. Massey v. State, 863 So. 2d 1019, 2004 Miss. App. LEXIS 30 (Miss. Ct. App. 2004).

The evidence was insufficient to support a conviction of receiving stolen property where the State proved that the stolen skidder was in a heavily wooded area which no one other than the defendant and the co-defendant entered during three days of police surveillance, that the defendant had some control and dominion over the skidder, and that he intended to sell parts from it, but did not show how the defendant came into possession of the skidder. The State failed to prove the defendant's "guilty knowledge" in that there was no evidence that the defendant received the stolen skidder knowing it to be stolen. Lewis v. State, 573 So. 2d 713, 1990 Miss. LEXIS 791 (Miss. 1990).

Defendant was entitled to directed verdict where the evidence merely established that he had had possession of a recently stolen generator, which was worth more than $100, and which had been sold or pawned by him for $20. Whatley v. State, 490 So. 2d 1220, 1986 Miss. LEXIS 2499 (Miss. 1986).

In a prosecution under this section [Code 1942, § 2249], testimony of witnesses that they stole cotton, took it to defendant's house late at night, and advised him that it was stolen, is adequately corroborated by the testimony of one from whom it was stolen that he followed tracks from his cotton house to the home of the witnesses, and that at fences pieces of cotton were on the ground. Fielder v. State, 235 Miss. 44, 108 So. 2d 590, 1959 Miss. LEXIS 400 (Miss. 1959).

In a prosecution for receiving stolen property at a value of over $25.00, where the defendant did not object to testimony relative to his oral confession made to a deputy sheriff and another, on the ground that there was no corroborative evidence of the corpus delicti aside from the confession, the confession was properly admitted, and, when considered along with existing corroborative evidence, amply warranted a verdict of guilty. Allen v. State, 230 Miss. 740, 93 So. 2d 844, 1957 Miss. LEXIS 416 (Miss. 1957).

Testimony of three accomplices, which was reasonable, and was not improbable, or self contradictory, or substantially impeached, was sufficient to sustain a conviction. Walker v. State, 229 Miss. 540, 91 So. 2d 548, 1956 Miss. LEXIS 638 (Miss. 1956).

A conviction for receiving stolen goods, based on evidence showing defendant guilty of larceny, cannot be sustained. Manning v. State, 129 Miss. 179, 91 So. 902, 1922 Miss. LEXIS 33 (Miss. 1922).

Ownership must be proven as laid in indictment. McAlpin v. State, 123 Miss. 528, 86 So. 339, 1920 Miss. LEXIS 53 (Miss. 1920).

Under an indictment for receiving stolen goods, proof that the defendant himself stole them will not convict. Sartorious v. State, 24 Miss. 602, 1852 Miss. LEXIS 110 (Miss. 1852); Frank v. State, 67 Miss. 125, 6 So. 842, 1889 Miss. LEXIS 31 (Miss. 1889).

22. Instructions.

Although former § 97-17-69 implicitly requires felonious intent, record reflected that jury instruction was not improper where it sufficiently tracked statute and there was ample evidence of defendant's wrongful intent. Cummins v. State, 515 So. 2d 869, 1987 Miss. LEXIS 2876 (Miss. 1987), overruled, Morgan v. State, 703 So. 2d 832, 1997 Miss. LEXIS 260 (Miss. 1997).

Instruction regarding offense of receiving stolen property may not assume as true that defendant was acting in concert with alleged accomplices and that property sold by defendant was feloniously stolen. Van v. State, 477 So. 2d 1350, 1985 Miss. LEXIS 2267 (Miss. 1985).

An instruction which assumes as true a material fact, the truth of which is for the determination of the jury, is erroneous. Church v. State, 288 So. 2d 855, 1974 Miss. LEXIS 1875 (Miss. 1974).

In a prosecution for receiving stolen property, a requested instruction that the persons from whom it was received are subject to prosecution for grand larceny is properly refused. Fielder v. State, 235 Miss. 44, 108 So. 2d 590, 1959 Miss. LEXIS 400 (Miss. 1959).

In a prosecution for receiving stolen property an instruction to the jury that unexplained flight is a circumstance from which an inference of guilt may be drawn and considered with all other facts and circumstances connected with the case was in error where the accused gave an entirely plausible and uncontradicted explanation of the reason why he had been absent from the county. Eubanks v. State, 227 Miss. 162, 85 So. 2d 805, 1956 Miss. LEXIS 669 (Miss. 1956).

An instruction that, if property is shown to have been recently stolen, or if the property was of a nature which would indicate or from which to a reasonable man would indicate its being stolen, or if the property bore marks sufficient to give the defendant a knowledge of its ownership when received by him, there is a presumption that the defendant had knowledge of its being stolen, is fatally erroneous. Pettus v. State, 200 Miss. 397, 27 So. 2d 536, 1946 Miss. LEXIS 302 (Miss. 1946).

Refusal of the court to instruct the jury that it must find the value of the property in a prosecution for receiving stolen property was not error, although the state in its instructions treated the matter as though the value, in order to become a felony, must exceed $25. Claxton v. State, 185 Miss. 426, 187 So. 877, 1939 Miss. LEXIS 149 (Miss. 1939).

23. Miscellaneous.

A Negro convicted of feloniously receiving stolen property was not entitled to a new trial upon the ground of unproven allegations of prejudice against members of his race by the jurors, which tried him, where no objection had been made to the qualifications of the juror before the jury had been impaneled and sworn. Walker v. State, 229 Miss. 540, 91 So. 2d 548, 1956 Miss. LEXIS 638 (Miss. 1956).

RESEARCH REFERENCES

ALR.

Receiving property stolen in another state or country as receiving stolen property. 67 A.L.R.2d 752.

Attempts to receive stolen property. 85 A.L.R.2d 259.

Sufficiency of description of stolen property in indictment or information for receiving it. 99 A.L.R.2d 813.

What amounts to "exclusive" possession of stolen goods to support inference of burglary or other felonious taking. 51 A.L.R.3d 727.

Receipt of public documents taken by another without authorization as receipt of stolen property. 57 A.L.R.3d 1211.

Receiver of stolen goods as accomplice of thief for purposes of corroboration. 74 A.L.R.3d 560.

Modern status: instruction allowing presumption or inference of guilt from possession of recently stolen property as violation of defendant's privilege against self-incrimination. 88 A.L.R.3d 1178.

What constitutes "recently" stolen property within rule inferring guilt from unexplained possession of such property. 89 A.L.R.3d 1202.

What constitutes "constructive" possession of stolen property to establish requisite element of possession supporting offense of receiving stolen property. 30 A.L.R.4th 488.

Conviction of receiving stolen property, or related offenses, where stolen property previously placed under police control. 72 A.L.R.4th 838.

Defendant indicted only for receipt of stolen government property under 18 USCS § 641 as subject to conviction for that offense when he in fact stole the property. 43 A.L.R. Fed. 847.

Am. Jur.

66 Am. Jur. 2d, Receiving and Transporting Stolen Property §§ 1 et seq.

CJS.

76 C.J.S., Receiving or Transferring Stolen Goods and Related Offenses §§ 1 et seq.

§ 97-17-71. Receiving stolen property; definitions; scrap metal dealers and other purchasers to keep records of purchases of metal property; content of records; metal property to be held separate and identifiable from other purchases for not less than three (3) business days from date of purchase; inspection by law enforcement personnel; hold notice; recovery of metal property by rightful owner; restitution to dealer by unlawful seller; false statement of ownership; cash transactions for purchase of scrap metal prohibited; failure to maintain appropriate records; interstate transportation of metal property; purchase and possession of metal beer kegs and/or metal syrup tanks generally used by soft drink industry prohibited except in limited circumstances; sales and purchases of bronze memorials prohibited except in limited circumstances; purchase of utility access covers or metal property identified as belonging to political subdivision except in limited circumstances; purchases of metal property from minors prohibited; limitation on hours of purchase; penalties.

(1) For the purposes of this section, the following terms shall have the meanings ascribed in this section:

(a) "Railroad materials" means any materials, equipment and parts used in the construction, operation, protection and maintenance of a railroad.

(b) "Copper materials" means any copper wire, bars, rods or tubing, including copper wire or cable or coaxial cable of the type used by public utilities, common carriers or communication services providers, whether wireless or wire line, copper air conditioner evaporator coil or condenser, aluminum copper radiators not attached to a motor vehicle, or any combination of these.

(c) "Aluminum materials" means any aluminum cable, bars, rods or tubing of the type used to construct utility, communication or broadcasting towers, aluminum utility wire and aluminum irrigation pipes or tubing. "Aluminum materials" does not include aluminum cans that have served their original economic purpose.

(d) "Law enforcement officer" means any person appointed or employed full time by the state or any political subdivision thereof, or by the state military department as provided in Section 33-1-33, who is duly sworn and vested with authority to bear arms and make arrests, and whose primary responsibility is the prevention and detection of crime, the apprehension of criminals and the enforcement of the criminal traffic laws of this state or the ordinances of any political subdivision thereof.

(e) "Metal property" means materials as defined in this section as railroad track materials, copper materials and aluminum materials and electrical, communications or utility brass, metal covers for service access and entrances to sewers and storm drains, metal bridge pilings, irrigation wiring and other metal property attached to or part of center pivots, grain bins, stainless steel sinks, catalytic converters not attached to a motor vehicle and metal beer kegs. Metal property does not include ferrous materials not listed in this section.

(f) "Person" means an individual, partnership, corporation, joint venture, trust, limited liability company, association or any other legal or commercial entity.

(g) "Personal identification card" means any government issued photographic identification card.

(h) "Photograph" or "photographically" means a still photographic image, including images captured in digital format, that are of such quality that the persons and objects depicted are clearly identifiable.

(i) "Purchase transaction" means a transaction in which a person gives consideration in exchange for metal property.

(j) "Purchaser" means a person who gives consideration in exchange for metal property.

(k) "Record" or "records" means a paper, electronic or other method of storing information.

(*l*) "Scrap metal dealer" means any person who is engaged, from a fixed location or otherwise, in the business of paying compensation for metal property that has served its original economic purpose, whether or not the person is engaged in the business of performing the manufacturing process by which metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value.

(2) Every scrap metal dealer or other purchaser shall keep an accurate and legible record in which he shall enter the following information for each purchase transaction:

(a) The name, address and age of the person from whom the metal property is purchased as obtained from the seller's personal identification card;

(b) The date and place of each acquisition of the metal property;

(c) The weight, quantity or volume and a general physical description of the type of metal property, such as wire, tubing, extrusions or casting, purchased in a purchase transaction;

(d) The amount of consideration given in a purchase transaction for the metal property;

(e) The vehicle license tag number, state of issue and the make and type of the vehicle used to deliver the metal property to the purchaser;

(f) If a person other than the seller delivers the metal property to the purchaser, the name, address and age of the person who delivers the metal property;

(g) A signed statement from the person receiving consideration in the purchase transaction stating that he is the rightful owner of the metal property or is entitled to sell the metal property being sold;

(h)(i) A scanned copy or a photocopy of the personal identification card of the person receiving consideration in the purchase transaction; or

(ii) If a person other than the seller delivers the metal property to the purchaser, a scanned copy or a photocopy of the personal identification card of the person delivering the metal property to the purchaser; and

(i) A photograph, videotape or similar likeness of the person receiving consideration or any person other than the seller who delivers the metal property to the purchaser in which the person's facial features are clearly visible and in which the metal property the person is selling or delivering is clearly visible.

Such records shall be maintained by the scrap metal dealer or purchaser for not less than two (2) years from the date of the purchase transaction, and such records shall be made available to any law enforcement officer during usual and customary business hours.

(3) The purchaser of metal property must hold the metal property separate and identifiable from other purchases for not less than three (3) business days from the date of purchase. The purchaser shall also photographically capture the metal property in the same form, without change, in which the metal property was acquired, and maintain the photograph for a period of not less than two (2) years. The time and date shall be digitally recorded on the photograph, and the identity of the person taking the photograph shall be recorded. The purchaser shall permit any law enforcement officer to make an inspection of the metal property during the holding period, and of all photographs of the metal property. Any photograph of metal property taken and maintained pursuant to this subsection shall be admissible in any civil or criminal proceeding.

(4) During the usual and customary business hours of a scrap metal dealer or other purchaser, a law enforcement officer, after proper identification as a law enforcement officer, shall have the right to inspect all purchased metal property in the possession of the scrap metal dealer or purchaser.

(5)(a) Whenever a law enforcement officer has reasonable cause to believe that any item of metal property in the possession of a scrap metal dealer or other purchaser has been stolen, a law enforcement officer who has an affidavit from the alleged rightful owner of the property identifying the property with specificity, including any identifying markings, may issue and deliver a written hold notice to the scrap metal dealer or other purchaser. The hold notice shall specifically identify those items of metal property that are believed to have been stolen and that are subject to the hold notice. Upon receipt of the notice, the scrap metal dealer or other purchaser may not process or remove the metal property identified in the notice from the place of business of the scrap metal dealer or purchaser for fifteen (15) calendar days after receipt of the notice, unless sooner released by a law enforcement officer.

(b) No later than the expiration of the fifteen-day period, a law enforcement officer, after receiving additional substantive evidence beyond the initial affidavit, may issue and deliver a second written hold notice, which shall be an extended hold notice. The extended hold notice shall specifically identify those items of metal property that are believed to have been stolen and that are subject to the extended hold notice. Upon receipt of the extended hold notice, the scrap metal dealer or purchaser may not process or remove the items of metal property identified in the notice from the place of business of the scrap metal dealer or purchaser for fifteen (15) calendar days after receipt of the extended hold notice, unless sooner released by a law enforcement officer.

(c) At the expiration of the hold period or, if extended in accordance with this subsection, at the expiration of the extended hold period, the hold is automatically released, then the scrap metal dealer or purchaser may dispose of the metal property unless other disposition has been ordered by a court of competent jurisdiction.

(d) If the scrap metal dealer or other purchaser contests the identification or ownership of the metal property, the party other than the scrap metal dealer or other purchaser claiming ownership of any metal property in the possession of a scrap metal dealer or other purchaser, provided that a timely report of the theft of the metal property was made to the proper authorities, may bring a civil action in the circuit court of the county in which the scrap metal dealer or purchaser is located. The petition for the action shall include the means of identification of the metal property utilized by the petitioner to determine ownership of the metal property in the possession of the scrap metal dealer or other purchaser.

(e) When a lawful owner recovers stolen metal property from a scrap metal dealer or other purchaser who has complied with this section, and the person who sold the metal property to the scrap metal dealer or other purchaser is convicted of a violation of this section, or theft by receiving stolen property under Section 97-17-70, the court shall order the convicted person to make full restitution to the scrap metal dealer or other purchaser, including, without limitation, attorney's fees, court costs and other expenses.

(6) This section shall not apply to purchases of metal property from any of the following:

(a) A law enforcement officer acting in an official capacity;

(b) A trustee in bankruptcy, executor, administrator or receiver who has presented proof of such status to the scrap metal dealer;

(c) Any public official acting under a court order who has presented proof of such status to the scrap metal dealer;

(d) A sale on the execution, or by virtue of any process issued by a court, if proof thereof has been presented to the scrap metal dealer; or

(e) A manufacturing, industrial or other commercial vendor that generates or sells regulated metal property in the ordinary course of its business.

(7) It shall be unlawful for any person to give a false statement of ownership or to give a false or altered identification or vehicle tag number and receive money or other consideration from a scrap metal dealer or other purchaser in return for metal property.

(8) A scrap metal dealer or other purchaser shall not enter into any cash transactions in payment for the purchase of metal property. Payment shall be made by check issued to the seller of the metal, made payable to the name and address of the seller and mailed to the recorded address of the seller, or by electronic funds transfer. Payment shall not be made for a period of three (3) days after the purchase transaction.

(9) If a person acquiring metal property fails to maintain the records or to hold such materials for the period of time prescribed by this section, such failure shall be prima facie evidence that the person receiving the metal property received it knowing it to be stolen in violation of Section 97-17-70.

(10) It shall be unlawful for any person to transport or cause to be transported for himself or another from any point within this state to any point outside this state any metal property, unless the person or entity first reports to the sheriff of the county from which he departs this state transporting such materials the same information that a purchaser in this state would be required to obtain and keep in a record as set forth in subsection (2) of this section. In such a case the sheriff receiving the report shall keep the information in records maintained in his office as a public record available for inspection by any person at all reasonable times. This section shall not apply to a public utility, as that term is defined in Section 77-3-3, engaged in carrying on utility operations; to a railroad, as that term is defined in Section 77-9-5; to a communications service provider, whether wireless or wire line; to a scrap metal dealer; or to a person identified in subsection (6) as being exempt from the provisions of this section.

(11) It shall be unlawful for a scrap metal dealer or other purchaser to knowingly purchase or possess a metal beer keg, or a metal syrup tank generally used by the soft drink industry, whether damaged or undamaged, or any reasonably recognizable part thereof, on any premises that the dealer uses to buy, sell, store, shred, melt, cut or otherwise alter scrap metal. However, it shall not be unlawful to purchase or possess a metal syrup tank generally used by the soft drink industry if the scrap metal dealer or other purchaser obtains a bill of sale at the time of purchase from a seller if the seller is a manufacturer of such tanks, a soft drink company or a soft drink distributor.

(12) It shall be unlawful to sell to a scrap metal dealer any bronze vase and/or marker, memorial, statue, plaque, or other bronze object used at a cemetery or other location where deceased persons are interred or memorialized, or for any such dealer to purchase those objects, unless the source of the bronze is known and notice is provided to the municipal or county law enforcement agency where the dealer is located. The notice shall identify all

names, letters, dates and symbols on the bronze and a photograph of the bronze shall be attached thereto. Written permission from the cemetery and the appropriate law enforcement agency must be received before any type of bronze described in this subsection may be purchased, processed, sold or melted.

(13) It shall be unlawful for any scrap metal dealer to purchase any manhole cover and other similar types of utility access covers, including storm drain covers, or any metal property clearly identified as belonging to a political subdivision of the state or a municipality, unless that metal property is purchased from the political subdivision, the municipal utility or the manufacturer of the metal. Any purchaser who purchases metal property in bulk shall be allowed twenty-four (24) hours to determine if any metal property prohibited by this subsection is included in a bulk purchase. If such prohibited metal property is included in a bulk purchase, the purchaser shall notify law enforcement no later than twenty-four (24) hours after the purchase.

(14) It shall be unlawful for a scrap metal dealer or other purchaser to purchase metal property from a person younger than eighteen (18) years of age.

(15) Metal property may not be purchased, acquired or collected between the hours of 9:00 p.m. and 6:00 a.m.

(16) Except as provided in this subsection, any person willfully or knowingly violating the provisions of this section shall, upon conviction thereof, be deemed guilty of a misdemeanor, and shall be punished by a fine not to exceed One Thousand Dollars ($1,000.00) per offense, unless the purchase transaction or transactions related to the violation, in addition to any costs which are, or would be, incurred in repairing or in the attempt to recover any property damaged in the theft of or removal of the metal property, are in aggregate an amount which exceeds One Thousand Dollars ($1,000.00) but less than Five Thousand Dollars ($5,000.00), in which case the person shall be guilty of a felony and shall be imprisoned in the custody of the Department of Corrections for a term not to exceed five (5) years, fined not more than Ten Thousand Dollars ($10,000.00), or both. Any person found guilty of stealing metal property or receiving metal property, knowing it to be stolen in violation of Section 97-17-70, shall be ordered to make full restitution to the victim, including, without limitation, restitution for property damage that resulted from the theft of the property.

(17) If the purchase transaction or transactions related to the violation, in addition to any costs which are, or would be, incurred in repairing or in the attempt to recover any property damaged in the theft of or removal of the metal property, are in aggregate an amount which exceeds Five Thousand Dollars ($5,000.00) but less than Twenty-five Thousand Dollars ($25,000.00), the person shall be guilty of a felony and shall be imprisoned in the custody of the Department of Corrections for a term not to exceed ten (10) years, fined not more than Ten Thousand Dollars ($10,000.00), or both.

(18) If the purchase transaction or transactions related to the violation, in addition to any costs which are, or would be, incurred in repairing or in the

attempt to recover any property damaged in the theft of or removal of the metal property, are in aggregate an amount which exceeds Twenty-five Thousand Dollars ($25,000.00), the person shall be guilty of a felony and shall be imprisoned in the custody of the Department of Corrections for a term not to exceed twenty (20) years, fined not more than Ten Thousand Dollars ($10,000.00), or both.

(19) This section shall not be construed to repeal other criminal laws. Whenever conduct proscribed by any provision of this section is also proscribed by any other provision of law, the provision which carries the more serious penalty shall be applied.

(20) This section shall apply to all businesses regulated under this section without regard to the location within the State of Mississippi.

(21) This section shall not be construed to prohibit municipalities and counties from enacting and implementing ordinances, rules and regulations that impose stricter requirements relating to purchase transactions.

HISTORY: Codes, 1942, § 2249.5; Laws, 1966, ch. 390, §§ 1-3, 1971, ch. 474, §§ 1-5; Laws, 1989, ch. 578, § 1; Laws, 1993, ch. 359, § 2; Laws, 2008, 1st Ex Sess, ch. 29, § 1; Laws, 2012, ch. 536, § 1; Laws, 2014, ch. 457, § 23, eff from and after July 1, 2014.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony or misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

ALR.

Modern status: instruction allowing presumption or inference of guilt from possession of recently stolen property as violation of defendant's privilege against self-incrimination. 88 A.L.R.3d 1178.

Am. Jur.

66 Am. Jur. 2d, Receiving and Transporting Stolen Property §§ 1 et seq.

CJS.

76 C.J.S., Receiving Stolen Goods §§ 1 et seq.

§ 97-17-71.1. Registration by scrap metal dealers with office of Secretary of State required; penalties for violations; enforcement.

(1)(a) From and after August 7, 2008, it shall be unlawful for any scrap metal dealer or any person who purchases scrap metal, deals in scrap metal, or otherwise engages in the scrap metal business to fail to register with the Secretary of State. All registrations under this section shall expire two (2) years from the date of the registration or the renewal thereof.

(b) The Secretary of State may promulgate and adopt such rules and regulations as are reasonably necessary to carry out the provisions of this section and establish such registration and renewal fees as are adequate to cover the administrative costs associated with the registration program.

(c) The Secretary of State may deny, suspend, revoke or refuse to renew any registration following notice to the applicant or registrant in accordance with the promulgated rules and an opportunity for a hearing for any failure to comply with this section, or for other good cause.

(2) A violation of this section is a misdemeanor punishable by a fine of not less than Five Hundred Dollars ($500.00) but not to exceed One Thousand Dollars ($1,000.00) for the first offense. Any person who shall be guilty of any subsequent violations of this section requiring registration shall be guilty of a felony offense and shall be imprisoned in the custody of the Department of Corrections for a term not to exceed three (3) years, fined not more than Five Thousand Dollars ($5,000.00), or both.

(3)(a) To register or renew registration, the registrant must declare, under penalty of perjury, whether such registrant has ever been convicted of a violation of Section 97-17-71 or convicted of a criminal offense of larceny, burglary or vandalism, where the offense involved metal property as defined in Section 97-17-71.

(b)(i) An applicant who has been convicted of a violation of Section 97-17-71, or who has a conviction for a criminal offense of larceny, burglary or vandalism where such offense involved metal property, shall be prohibited from registering under this section for five (5) years from the date of conviction.

(ii) Any false statement submitted to the Secretary of State for the purpose of unlawfully registering under this section shall be punished as perjury in the manner provided in Section 97-9-61, and a person so convicted shall be disqualified for life from registering as a scrap metal dealer under this section.

(4) The Secretary of State shall immediately report any suspected criminal violation accompanied by all relevant records to the Office of Attorney General and the appropriate district attorney for further proceedings.

(5) The Secretary of State shall have the authority to:

(a) Conduct and carry out criminal background history verification of the information provided by the applicant or registrant and to require the submission of information and forms from the applicant or registrant in order to accomplish the registration duties imposed by this section;

(b) Issue a cease and desist order, with a prior hearing, against the scrap metal dealer or other purchaser alleged to be in violation of this section, directing the person or persons to cease and desist from further illegal activity;

(c)(i) Issue an order against any scrap metal dealer or other purchaser for any violation of this section, imposing an administrative penalty up to a maximum of One Thousand Dollars ($1,000.00) for each offense. Each violation shall be considered a separate offense in a single proceeding or a series of related proceedings. Any administrative penalty, plus reimbursement for all costs and expenses incurred in the investigation of the violation and any administrative proceedings, shall be paid to the Secretary of State;

(ii) For the purpose of determining the amount or extent of a sanction, if any, to be imposed under paragraph (c)(i) of this subsection, the Secretary of State shall consider, among other factors, the frequency, persistence and willfulness of the conduct constituting a violation of this section or any rule or order hereunder; the number of persons adversely affected by the conduct; and the resources of the person committing the violation;

(d) Bring an action in chancery court to enjoin the acts or practices complained of to enforce compliance with this section or any rule promulgated or order entered hereunder. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. In addition, upon a proper showing by the Secretary of State, the court may enter an order of rescission or restitution directed to any person who has engaged in any act constituting a violation of any provision of this section or any rule or order hereunder, or the court may impose a civil penalty up to a maximum of One Thousand Dollars ($1,000.00) for each offense, provided that each violation shall be considered as a separate offense in a single proceeding or a series of related proceedings. The court may not require the Secretary of State to post a bond.

(6) Any person aggrieved by a final order of the Secretary of State may obtain a review of the order in the Chancery Court of the First Judicial District of Hinds County, Mississippi, by filing in the court, within thirty (30) days after the entry of the order, a written petition praying that the order be modified or set aside, in whole or in part. A copy of the petition shall be forthwith served upon the Secretary of State and thereupon the Secretary of State shall certify and file in court a copy of the filing and evidence upon which the order was entered. When these have been filed, the court has exclusive jurisdiction to affirm, modify, enforce or set aside the order, in whole or in part.

HISTORY: Laws, 2008, 1st Ex Sess, ch. 29, § 2; Laws, 2016, ch. 447, § 3, eff from and after July 1, 2016.

§ 97-17-71.2. Scrap metal dealers prohibited from paying cash or making payment of any kind at time of transaction for air conditioner evaporator coil or condenser; scrap metal dealers permitted to purchase air conditioner evaporator coil or condenser only from certain contractors or companies; payment for scrap metal to be made by check or money order and mailed to business address of company for whom metal being sold; penalties for violations.

(1) It is an offense for a scrap metal dealer or other purchaser to pay cash to a person who presents an air conditioner evaporator coil or condenser, in

whole or in part, for sale as scrap, or for such dealer to make payment of any kind at the time of the transaction.

(2) Scrap metal described in subsection (1) may only be sold for scrap by an authorized agent, representative or employee of one (1) of the following:

(a) A licensed HVAC contractor who acquired the evaporator coil or condenser in the performance as a contractor as defined in Section 31-3-1;

(b) A company meeting all local or municipal requirements to obtain a permit from that jurisdiction to repair, replace and install HVAC units containing copper evaporator coils or condensers;

(c) Where the jurisdiction does not require a permit to repair, replace and install HVAC units containing copper evaporator coils or condensers, by a company holding a privilege license indicating the business as that of an HVAC installer or repairer; or

(d) A company holding a privilege license indicating the business as that of an HVAC installer or repairer.

(3) The person offering an air conditioner evaporator coil or condenser for sale as scrap on behalf of a company listed in subsection (2) shall have in the person's possession documentation that the company for whom it is being sold is a company described in subsection (2), and that the person selling the evaporator coil or condenser is an authorized agent, representative or employee of that company.

(4) Payment for scrap metal described in subsection (1) must be made by check or money order, mailed to the business address of the company for whom the metal is being sold, and the name of the company must be the payee on the check.

(5)(a) A violation of this section is a misdemeanor punishable by a fine not to exceed One Thousand Dollars ($1,000.00) per offense.

(b) Nothing in this section shall be construed to preclude a person violating this section from also being prosecuted for any other applicable criminal offense.

HISTORY: Laws, 2008, 1st Ex Sess, ch. 29, § 3, eff 60 days after passage (approved June 9, 2008).

§ 97-17-73. Removing agricultural products subject to lien from premises where produced.

Any person who, with notice of an employer's, employee's, laborer's, cropper's, part-owner's, or landlord's lien on any agricultural products, and with intent to defeat or impair the lien shall remove from the premises on which it was produced, or shall conceal, or aid or assist to remove or conceal, anything subject to such lien, and upon which any other person shall have such lien, without the consent of such person, shall, upon conviction, be punished by a fine of not more than five hundred dollars, and by imprisonment in the county jail not more than six months, or by either.

HISTORY: Codes, 1880, § 1362; 1892, § 1183; 1906, § 1261; Hemingway's 1917, § 991; 1930, § 1019; 1942, § 2251.

Cross References — Lien of executions, see § 13-3-139.
Removing property levied upon, see § 97-9-69.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Malicious prosecutions.

1. In general.

Tenant without his landlord's permission could not remove from leased premises products of place and property furnished him by landlord, on which products and furnishings a landlord's lien existed. Scarborough v. Lucas, 119 Miss. 128, 80 So. 521, 1918 Miss. LEXIS 18 (Miss. 1918).

In a prosecution for removing from the premises garden produce, subject to a landlord's lien, intent to defeat or impair the lien is the gravamen of the charge. Dolph v. State, 111 Miss. 668, 71 So. 911, 1916 Miss. LEXIS 364 (Miss. 1916).

Evidence is admissible to prove defendant's understanding that lien applied only to corn and cotton, not to the produce removed. Dolph v. State, 111 Miss. 668, 71 So. 911, 1916 Miss. LEXIS 364 (Miss. 1916).

2. Malicious prosecutions.

Where the landlord's agent in prosecuting a tenant's widow for removing agricultural products from the premises was acting without the scope of his employment, in that he was employed only to collect the balance due the landlord on the tenant's note, and if necessary to enforce the lien claimed by the landlord on agricultural products, produced by the tenant on the leased premises, and a criminal prosecution was not the appropriate means to accomplish such purpose, the landlord could not be held liable in an action for malicious prosecution. State Life Ins. Co. v. Hardy, 189 Miss. 266, 195 So. 708, 1940 Miss. LEXIS 102 (Miss. 1940).

The fact that the affidavit on which the plaintiff was prosecuted under this section [Code 1942, § 2251] failed to charge a crime thereunder, did not relieve the maker of the affidavit from liability in an action for malicious prosecution. State Life Ins. Co. v. Hardy, 189 Miss. 266, 195 So. 708, 1940 Miss. LEXIS 102 (Miss. 1940).

While a defective affidavit in a prosecution before a justice of the peace under this section [Code 1942, § 2251] could have been amended at the trial so as to allege facts constituting a crime hereunder, such affidavit could not be amended after the trial and acquittal, and affiant would not be permitted, as a defense to a subsequent action for malicious prosecution, to say that he would have amended it by alleging facts constituting a crime. State Life Ins. Co. v. Hardy, 189 Miss. 266, 195 So. 708, 1940 Miss. LEXIS 102 (Miss. 1940).

Conceding that a defective affidavit hereunder could be treated in a malicious prosecution action as amended so as to charge a crime hereunder, affiant could not escape liability in an action for malicious prosecution where the person accused had no "intent to defeat or impair" the landlord's lien in view of the facts that the statutory lien for the debt in question had been discharged and such person had no knowledge of the conventional lien contained in the note given by her deceased husband to the landlord, affiant's principal, for the debt in question. State Life Ins. Co. v. Hardy, 189 Miss. 266, 195 So. 708, 1940 Miss. LEXIS 102 (Miss. 1940).

Conceding that a defective affidavit could be treated in an action for malicious prosecution against the affiant as amended so as to charge a crime hereunder, affiant should not escape liability where the statutory lien on the cotton allegedly removed by the plaintiff had been discharged and plaintiff had no notice of the conventional lien contained in her husband's note to the landlord, affiant's principal, especially in view of the custom of her husband, without objection of the landlord, to remove cotton raised by him on the plantation, and to store it in a warehouse in a different county before paying the rent due by him, and in view of the request of the landlord that the plaintiff send him the warehouse receipt for sufficient cotton to pay the balance of her husband's debt, which he could only do by removing the property from the premises to a warehouse. State Life Ins. Co. v. Hardy, 189 Miss. 266, 195 So. 708, 1940 Miss. LEXIS 102 (Miss. 1940).

Where the landlord's agent as defendant in an action for malicious prosecution growing out of his prosecution of the tenant's wife hereunder for removing agricultural products subject to a conventional lien contained in the tenant's note to the landlord, relied on the defense that he acted on the advice of an attorney at law, such defense was unavailing in view of the agent's failure to make full disclosure of the facts, especially that the tenant's wife had no knowledge of such conventional lien and that she was acting on the theory that since the rent for the last year was paid, there was no statutory lien on the agricultural products. State Life Ins. Co. v. Hardy, 189 Miss. 266, 195 So. 708, 1940 Miss. LEXIS 102 (Miss. 1940).

RESEARCH REFERENCES

ALR.

Farmland cultivation arrangement as creating status of landlord-tenant or landowner-cropper. 95 A.L.R.3d 1013.

§ 97-17-75. Removing personal property subject to lien from county, or selling same.

Any person who shall remove, or cause to be removed, or aid or assist in removing from the county in which it may be, any personal property which may be the subject of a pledge, mortgage, deed of trust, conditional sales contract, lien of a lessor of lands, or lien by judgment, or any other lien of which such party has notice, without the consent of the holder of such encumbrance or lien, or who shall conceal or secrete such property, or who shall sell or dispose of the same or any part thereof without the consent of the mortgagee or beneficiary, or conditional vendor, with intent to defraud the holder of the encumbrance or lien, whether any of these acts shall be done before or after the maturity of the debt secured by the lien, and shall not immediately discharge such encumbrance or lien or pay to the holder of such lien or encumbrance the value of such property in event same is less than the amount of such lien or encumbrance, shall, upon conviction, be imprisoned in the custody of the Department of Corrections not more than three (3) years, or be fined not more than Five Thousand Dollars ($5,000.00), or both.

HISTORY: Codes, 1871, § 2659; 1880, § 2909; 1892, § 1184; 1906, § 1262; Hemingway's 1917, § 992; 1930, § 1020; 1942, § 2252; Laws, 1954, ch. 237, § 2; Laws, 2005, ch. 511, § 5, eff from and after July 1, 2005.

Cross References — Affidavit of attachment against debtor about to convert or dispose of property to defraud creditors, see § 11-33-9.

Lien of executions, see § 13-3-139.

Purchase money security interests, see §§ 75-9-107, 75-9-301, 75-9-312.

Removing property levied upon, see § 97-9-69.

Removal of agricultural products subject to lien, see § 97-17-73.

Removal of property subject to lien out of state, see § 97-17-77.

Sale of property previously sold or subject to lien as obtaining property by false pretenses, see § 97-19-51.

JUDICIAL DECISIONS

1. In general.

Privilege against self-incrimination cannot be relinquished by contract prior to development of circumstances which would make its exercise appropriate; accordingly, where a judgment debtor by written agreement bound himself by all the provisions of an application for a surety bond, wherein he promised the surety access to all books and records, and agreed to furnish financial statements and pledged all of his assets to indemnify the surety in the event of loss, and thereby induced the surety to write a performance and payment bond in excess of $2,000,000, the judgment debtor was not estopped from claiming the privilege as a ground for refusing to furnish a financial statement, where there was some question whether he had concealed or removed from the state assets subject to a judgment lien, and the debtor's refusal to furnish the statement in compliance with a Mississippi chancery court decree justified an adjudication of civil contempt. Morgan v. Thomas, 321 F. Supp. 565, 1970 U.S. Dist. LEXIS 9645 (S.D. Miss. 1970), rev'd, 448 F.2d 1356, 1971 U.S. App. LEXIS 8009 (5th Cir. Miss. 1971).

In a creditor's suit seeking disclosure of certain assets, the chancellor did not commit error in holding that the judgment debtor was entitled to assert his privilege against self-incrimination, under statutes making it a crime to remove property subject to liens out of the state or out of the county without consent or with intent to defraud. Ferguson v. Johnson Implement Co., 222 So. 2d 820, 1969 Miss. LEXIS 1560 (Miss. 1969).

Prosecution cannot be maintained under this section [Code 1942, § 2252] where the mortgage debt was not due when the alleged sale was made. State v. Sulivan, 80 Miss. 596, 32 So. 55, 1902 Miss. LEXIS 295 (Miss. 1902).

Under Code 1880, removing or secreting the property and failing promptly to discharge the lien together constituted the offense. The sale of the property in the county without more did not make out the crime. Polk v. State, 65 Miss. 433, 4 So. 540, 1888 Miss. LEXIS 11 (Miss. 1888).

OPINIONS OF THE ATTORNEY GENERAL

Criminal Code section forbidding sale of mortgaged goods applies to person who disposes of property subject to judgment lien. Kopf, July 22, 1992, A.G. Op. #92-0533.

RESEARCH REFERENCES

CJS.

52B C.J.S., Larceny §§ 12, 79, 80, 82.

§ 97-17-77. Removing personal property subject to lien out of state.

If any person shall move, or cause to be removed, to any place beyond the jurisdiction of this state, any personal property which shall at the time of such removal be under written pledge, or mortgage, or deed of trust, or conditional sales contract, or lien by judgment, or any other lien in this state, with intent to defraud the pledgee, mortgagee, trustee, cestui que trust, conditional vendor, or creditor, he shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than one thousand dollars ($1,000.00) or imprisoned in the county jail not more than twelve (12) months, or both. The removal with intent to defraud of such property valued at four hundred dollars ($400.00) or more shall be a felony punishable upon conviction by a fine of not less than five hundred dollars ($500.00) nor more than five thousand dollars ($5,000.00), or by imprisonment in the penitentiary not less than one (1) nor more than three (3) years, or by both.

HISTORY: Codes, 1871, § 2658; 1880, § 2908; 1892, § 1182; 1906, § 1260; Hemingway's 1917, § 990; 1930, § 1018; 1942, § 2250; Laws, 1954, ch. 237, § 1; Laws, 1975, ch. 459, eff from and after July 1, 1975.

Cross References — Affidavit of attachment against debtor about to remove self or property out of state, see § 11-33-9.

Lien of executions, see § 13-3-139.

Purchase money security interests, see §§ 75-9-107, 75-9-301, 75-9-312.

Removing property levied upon, see § 97-9-69.

Removal of property subject to lien out of county, see § 97-17-75.

Sale of property previously sold or subject to lien as obtaining property by false pretenses, see § 97-19-51.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Indictment.

1. In general.

In a creditor's suit seeking disclosure of certain assets, the chancellor did not commit error in holding that the judgment debtor was entitled to assert his privilege against self-incrimination, under statutes making it a crime to remove property subject to liens out of the state or out of the county without consent or with intent to defraud. Ferguson v. Johnson Implement Co., 222 So. 2d 820, 1969 Miss. LEXIS 1560 (Miss. 1969).

This section [Code 1942, § 2250] is not limited in its application to the person who has given the deed of trust on the property which he removes beyond the jurisdiction of the state, but is also directed against any person who shall move, or cause the same to be removed, with intent to defraud cestui que trust. State v. Michael, 201 Miss. 246, 29 So. 2d 117, 1947 Miss. LEXIS 392 (Miss. 1947).

Crime of obstructing justice is not constituent part of crime of removing property subject to lien, and they are not same offense. McGraw v. State, 157 Miss. 675, 128 So. 875, 1930 Miss. LEXIS 350 (Miss. 1930).

2. Indictment.

Indictment reciting that the owner of a certain automobile executed a trust deed thereon in favor of a bank to secure an indebtedness, and that thereafter, while said indebtedness was outstanding and unpaid and the deed of trust in full force and effect, defendant with full knowledge in the premises, unlawfully, wilfully, and knowingly removed such automobile beyond the jurisdiction of the state, without the consent of such bank, with unlawful intent to defraud the bank, was not subject to demurrer because it was not directed against the owner of the automobile. State v. Michael, 201 Miss. 246, 29 So. 2d 117, 1947 Miss. LEXIS 392 (Miss. 1947).

Indictment charging defendants with fraudulently moving out of state truck in sheriff's hands under levy made in landlord's lien proceeding held bad for duplicity. McGraw v. State, 157 Miss. 675, 128 So. 875, 1930 Miss. LEXIS 350 (Miss. 1930).

RESEARCH REFERENCES

CJS.
52B C.J.S., Larceny §§ 12, 79, 80, 82.

§ 97-17-79. Trees; boxing pine trees.

If any person shall box for turpentine, or cut or cause to be cut, a box or boxes in a pine tree growing on land known to belong to another, without the consent of the owner, he shall, on conviction, be fined not less than five dollars nor more than twenty dollars for each tree so cut or boxed, or be imprisoned in the county jail not exceeding three months, or both.

HISTORY: Codes, 1892, § 1317; 1906, § 1391; Hemingway's 1917, § 1134; 1930, § 1165; 1942, § 2408; Laws, 1890, p. 70.

Cross References — Authority of conservation officers of Commission on Wildlife, Fisheries and Parks to apprehend violators, see § 49-1-44.

Statutory penalty for boxing pine trees, see § 95-5-15.

JUDICIAL DECISIONS

1. In general.

An affidavit under this section [Code 1942, § 2408] must allege that the defendant knew that the land upon which the trees were growing belonged to another. Davis v. State, 80 Miss. 376, 31 So. 742, 1902 Miss. LEXIS 244 (Miss. 1902).

In a prosecution under this section [Code 1942, § 2408] title to the trees or possession thereof must be shown to be in another than the defendant and such title can only be shown by evidence such as would prove title to real estate. Davis v. State, 80 Miss. 376, 31 So. 742, 1902 Miss. LEXIS 244 (Miss. 1902).

Where the number of trees boxed is not alleged in the affidavit, the sentence can be imposed for boxing two trees only no matter how many the evidence may show defendant to have boxed. Davis v. State, 80 Miss. 376, 31 So. 742, 1902 Miss. LEXIS 244 (Miss. 1902).

§ 97-17-81. Trees; cutting or rafting upon lands of another.

If any person shall cut or raft any cypress, pine, oak, gum, hickory, pecan, walnut, mulberry, poplar, cottonwood, sassafras, or ash trees or timber upon any lands belonging to any other person or corporation, without permission from the owner thereof, or his agent duly authorized, such person shall, on conviction, be imprisoned in the county jail not more than five months, or fined not less than ten dollars nor more than one thousand dollars, or both.

HISTORY: Codes, Hutchinson's 1848, ch. 12, art. 6(7); 1857, ch. 64, art. 231; 1871, § 2685; 1880, § 2956; 1892, § 1305; 1906, § 1379; Hemingway's 1917, § 1119; 1930, § 1149; 1942, § 2386.

Cross References — Authority of conservation officers of Commission on Wildlife, Fisheries and Parks to apprehend violators, see § 49-1-44.

Prohibition on removal of pecans falling from private orchards onto public rights-of-way during harvesting season, see §§ 69-33-1 et seq.

Tampering with timber, etc., to injure owner, see §§ 97-3-89 et seq.

Cutting or rafting of timber on state lands, see § 97-7-65.
Stealing timber, see § 97-17-59.

JUDICIAL DECISIONS

1. In general.

There was no substantial doubt as to which statute applied to defendant's case, Miss. Code Ann. § 97-17-59(2) or Miss. Code Ann. § 97-17-81, because the inclusion in defendant's indictment of the phrase "wilfully, unlawfully, and feloniously," and the inclusion of the value of the stolen timber, $1,226, made it apparent that defendant was charged pursuant to the felony statute; the indictment also alleged a "felonious" intent on defendant's part. Pollard v. State, 932 So. 2d 82, 2006 Miss. App. LEXIS 477 (Miss. Ct. App. 2006).

One who assumes to sell timber on another's land may be liable to the true owner for trespass by the purchaser in cutting the timber, especially where he points out the exact trees cut, even though the seller, due to a surveyor's mistake, believed himself to be the owner of the land. Hutto v. Kremer, 222 Miss. 374, 76 So. 2d 204, 1954 Miss. LEXIS 654 (Miss. 1954).

Defendant whose employees cut trees on lands of another without consent of owner and without authority or direction from defendant is not criminally liable for fine and jail sentence under civil doctrine of respondeat superior, but proof must show that defendant himself willfully and knowingly cut and removed timber of another, or that he authorized his employees to do so. Smith v. State, 205 Miss. 170, 38 So. 2d 698, 1949 Miss. LEXIS 423 (Miss. 1949).

In prosecution under statute punishing trespass in cutting trees on another's land without his consent, defendant was entitled to directed verdict, where state failed to show that trees, which were cut on land of another where boundary line was not clearly marked, were not cut by defendant in good faith. Draughn v. State, 178 Miss. 646, 174 So. 564, 1937 Miss. LEXIS 265 (Miss. 1937).

To constitute trespass in cutting trees on another's land without his consent, cutting must be knowingly or wilfully done. Twitty v. State, 159 Miss. 593, 132 So. 746, 1931 Miss. LEXIS 89 (Miss. 1931); Draughn v. State, 178 Miss. 646, 174 So. 564, 1937 Miss. LEXIS 265 (Miss. 1937).

Criminal responsibility is limited to "timber" described in statute [Code 1942, § 2386]. Barnett v. State, 124 Miss. 884, 87 So. 421, 1921 Miss. LEXIS 187 (Miss. 1921).

RESEARCH REFERENCES

ALR.

Revocation of license to cut and remove timber as affecting rights in respect of timber cut but not removed. 26 A.L.R.2d 1194.

Am. Jur.

52 Am. Jur. 2d, Logs and Timber §§ 120, 121.

Law Reviews.

Ogletree, A primer concerning industrial timber litigation with emphasis upon Mississippi law. 59 Miss. L. J. 387, Fall 1989.

§ 97-17-83. Trees; injuring or destroying shade or ornamental tree.

If any person shall wilfully injure or destroy any shade tree or any ornamental tree not his own, on any highway or street, or in any yard, garden, or park, he shall, on conviction, be fined not less than five dollars nor more than twenty dollars for each tree so injured or destroyed, or shall be imprisoned in the county jail not less than ten days nor more than thirty days for each offense.

HISTORY: Codes, 1892, § 1319; 1906, § 1393; Hemingway's 1917, § 1136; 1930, § 1167; 1942, § 2410.

Cross References — Authority of conservation officers of Commission on Wildlife, Fisheries and Parks to apprehend violators, see § 49-1-44.

RESEARCH REFERENCES

Am. Jur.
75 Am. Jur. 2d, Trespass §§ 132 et seq.

CJS.
87 C.J.S., Trespass § 136.

§ 97-17-84. Penalty for removal of "sea oats" or "uniola paniculata" from shores.

Any person who removes a plant commonly known as "sea oats" or "uniola paniculata" from the shores of this state shall be guilty of a misdemeanor and shall, upon conviction, be fined not more than Five Hundred Dollars ($500.00).

HISTORY: Laws, 1989, ch. 453, § 1, eff from and after July 1, 1989.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 97-17-85. Trespass; going upon inclosed land of another.

Except as otherwise provided in Section 73-13-103, if any person shall go upon the enclosed land of another without his consent, after having been notified by such person or his agent not to do so, either personally or by published or posted notice, or shall remain on such land after a request by such person or his agent to depart, he shall, upon conviction, be fined not more than Fifty Dollars ($50.00) for such offense. The provisions of this section shall apply to land not enclosed where the stock law is in force.

HISTORY: Codes, 1880, § 2980; 1892, § 1320; 1906, § 1394; Hemingway's 1917, § 1137; 1930, § 1168; 1942, § 2411; Laws, 1997, ch. 425, § 2, eff from and after July 1, 1997.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Title or possession.
3. Indictment or affidavit charging offense.
4. Particular acts as constituting offense.
5. Lesser included offense.

1. In general.

In a case where defendants were convicted of burglary of a dwelling and simple assault, the evidence at trial did not support a lesser included offense instruction of trespass because (1) had defendants succeeded in their defense that they had permission to enter the dwelling, they would not have been guilty of trespass; (2) once defendants realized they were not welcome on the property and that they would not receive permission to enter the home, they broke into and entered the home when they punched through the tape covering the hole by the front door in order to unlock the door from the inside; (3) the existence of the marks on the rear entrance where a tire iron was used to attempt entry supported the more serious offense of burglary rather than trespass; and (4) there was evidence of intent to commit an assault when defendants entered the home based on their previous threats made to the second victim, their use of force to enter the home, their use of violence inside the home, and one defendant's actions of hurling a large rock into the second victim's windshield when he tried to drive away. Arbuckle v. State, 894 So. 2d 619, 2004 Miss. App. LEXIS 1080 (Miss. Ct. App. 2004), cert. dismissed, 904 So. 2d 184, 2005 Miss. LEXIS 397 (Miss. 2005).

Defendant to charge of burglary of inhabited dwelling house who offers testimony presenting viable explanation of presence in house as alternative to prosecution's theory that defendant intended to commit some crime in house is entitled to have jury given instruction on lesser included offense of trespass; furthermore, if instruction on trespass offered by defendant is bad, trial judge has responsibility to modify, correct, and submit to jury proper instruction. Harper v. State, 478 So. 2d 1017, 1985 Miss. LEXIS 2276 (Miss. 1985).

A prosecution for wilful trespass does not come within this section [Code 1942, § 2411] where it is not claimed that the land in question is enclosed. Johnston v. State, 232 Miss. 102, 98 So. 2d 445, 1957 Miss. LEXIS 449 (Miss. 1957).

Where a prosecution charging trespass upon land originated in the district of a certain justice of the peace, a justice of the peace of another district of the same county was not without jurisdiction to try the case, since the jurisdiction of every justice of the peace is co-extensive with his county, and he is authorized to issue any process in matters within his jurisdiction, to be executed in any part of his county. Walker v. State, 192 Miss. 409, 6 So. 2d 127, 1942 Miss. LEXIS 25 (Miss. 1942).

Time of commission of trespass is not an element of the offense. Card v. State, 182 Miss. 229, 181 So. 524, 1938 Miss. LEXIS 176 (Miss. 1938).

In prosecution for trespass, state was not required to prove commission of offense on date alleged in affidavit, but could prove commission on any date within two years prior to indictment. Card v. State, 182 Miss. 229, 181 So. 524, 1938 Miss. LEXIS 176 (Miss. 1938).

Refusal of instruction which in effect would require the state to prove commission of offense on date alleged in affidavit held not reversible. Card v. State, 182 Miss. 229, 181 So. 524, 1938 Miss. LEXIS 176 (Miss. 1938).

Discharged employee arrested after refusal to leave premises had no right of action for damages. King v. Weaver Pants Corp., 157 Miss. 77, 127 So. 718, 1930 Miss. LEXIS 272 (Miss. 1930).

2. Title or possession.

This section [Code 1942, § 2411] had no application, in a suit for damages for malicious prosecution on a charge of alleged criminal trespass in going to negro worker-tenants' homes on a plantation and helping them move therefrom, after having been notified by the one employed to look after the property not to do so, where it was not shown whether the land was enclosed, or if not enclosed, whether it was in a stock law district, and the tenants held such possession of the particular premises occupied by them as to entitle them to grant permission to the plaintiff to come to their homes for the purpose complained of. Brown v. Kisner, 192 Miss. 746, 6 So. 2d 611, 1942 Miss. LEXIS 48 (Miss. 1942).

Cutting of fence wholly owned by defendant could not constitute "trespass." Evans v. State, 159 Miss. 870, 132 So. 455, 1931 Miss. LEXIS 69 (Miss. 1931).

Business man having lawful dealings with employees of lumber company held not guilty of trespass by going to logging camp on premises leased to employees for that purpose. Lott v. State, 159 Miss. 484, 132 So. 336, 1931 Miss. LEXIS 58 (Miss. 1931).

In prosecution for trespass on land after notice not to do so, when land is in possession of another, title thereto is not involved. Raiford v. State, 87 Miss. 359, 39 So. 897, 1905 Miss. LEXIS 146 (Miss. 1905).

A person who pursuant to the directions of the owner of land in possession of tenants entered on the land for the purpose of driving away cattle belonging to the owner and found in a pasture used in common with the tenants is not guilty of trespassing on the land of another though the tenants objected to his entering on the land and driving away the cattle. Bowles v. State, 14 So. 261 (Miss. 1894).

Actual occupancy is necessary, it is not enough that the party once occupied and intends to return to the premises. Hester v. State, 67 Miss. 129, 6 So. 687, 1889 Miss. LEXIS 18 (Miss. 1889).

Neither title to the land nor the rightfulness of possession is to be inquired into, the statute protects actual possession. Knight v. State, 64 Miss. 802, 2 So. 252, 1887 Miss. LEXIS 108 (Miss. 1887); Lott v. State, 159 Miss. 484, 132 So. 336, 1931 Miss. LEXIS 58 (Miss. 1931).

3. Indictment or affidavit charging offense.

Where an affidavit set forth the facts of an alleged trespass and incorrectly stated that the trespass occurred contrary to the provisions of Code 1942, § 2411, and proof at the trial showed that the trespass occurred in an uninclosed rather than an inclosed area, the motion of the district attorney to strike from the affidavit the reference to Code 1942, § 2411 was properly granted, for the amendment changed no facts with which the defendant was charged in the affidavit and could not have prejudiced him. Shields v. State, 203 So. 2d 78, 1967 Miss. LEXIS 1354 (Miss. 1967).

A prosecution for wilful trespass upon the land of another does not come within this section [Code 1942, § 2411], where the affidavit charging that the defendant wilfully and unlawfully cut certain trees and timber on the land after having been notified and requested not to do so, made no claim that the land was enclosed. Johnston v. State, 232 Miss. 102, 98 So. 2d 445, 1957 Miss. LEXIS 449 (Miss. 1957).

In a prosecution on a charge of trespass on land, the affidavit of the complainant, which failed to describe the land, was at most only defective and not void, and might be amended by the furnishing of an accurate description of the land. Walker v. State, 192 Miss. 409, 6 So. 2d 127, 1942 Miss. LEXIS 25 (Miss. 1942).

Where the affidavit in a prosecution for trespass upon land charged that the defendant had "wilfully and maliciously" trespassed upon the real property after he had been notified not to go thereon, the defendant could have been tried either under the statute prohibiting wilful and malicious trespass, or under the statute prohibiting one to go upon the land of another after having been notified not to do so, since if the case was tried under the first mentioned statute, the allegation that the defendant had been notified not to go upon the property would be treated as surplusage, and on the other hand, if tried under the second statute, the language of the affidavit "wilfully and maliciously" would be disregarded. Walker v. State, 192 Miss. 409, 6 So. 2d 127, 1942 Miss. LEXIS 25 (Miss. 1942).

Indictment for trespass which fails to allege that accused entered without consent of owner after notice, or that he remained after notice to depart, is insufficient. Rube v. State, 101 Miss. 362, 58 So. 99, 1911 Miss. LEXIS 152 (Miss. 1911).

4. Particular acts as constituting offense.

Defendant could not be convicted of trespass under this section [Code 1942, § 2411], where his cow, which he had staked out on his own premises in close proximity to line fence, damaged the fence and entered upon adjoining lot of the prosecuting witness, in the absence of proof that defendant intended to wilfully damage the property of the prosecuting witness through the agency of his cow. Wilson v. State, 198 Miss. 828, 23 So. 2d 684, 1945 Miss. LEXIS 255 (Miss. 1945).

Dipping vat inspectors going on premises and taking mules in supposed performance of duties held not guilty of criminal trespass. Bacot v. State, 158 Miss. 258, 130 So. 282, 1930 Miss. LEXIS 41 (Miss. 1930).

5. Lesser included offense.

Trial court did not err in denying defendant a jury instruction on the lesser-included offense of trespass during his trial for business burglary because if the jury had believed defendant's testimony that he was not present when a storage locker was burglarized, it would have believed that he never entered the storage locker and had not committed trespass. Gray v. State, 931 So. 2d 627, 2006 Miss. App. LEXIS 52 (Miss. Ct. App. 2006).

RESEARCH REFERENCES

ALR.

Injunction against repeated or continuing trespasses on real property. 60 A.L.R.2d 310.

Entry on private lands in pursuit of wounded game as criminal trespass. 41 A.L.R.4th 805.

Am. Jur.

75 Am. Jur. 2d, Trespass §§ 132 seq.

CJS.

87 C.J.S., Trespass § 137.

§ 97-17-87. Trespass; willful or malicious; penalty; enhanced penalties for willful trespass upon airport operations area.

(1) Any person who shall be guilty of a willful or malicious trespass upon the real or personal property of another, for which no other penalty is prescribed, shall, upon conviction, be fined not exceeding Five Hundred Dollars ($500.00), or imprisoned not longer than six (6) months in the county jail, or both.

(2)(a) Any person who shall willfully trespass upon any air operations area or sterile area of an airport serving the general public shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than One Thousand Dollars ($1,000.00) or imprisoned in the county jail for up to one (1) year, or both.

(b) For the purposes of this subsection (2), "air operations area" means a portion of an airport designed and used for landing, taking off, or surface maneuvering of airplanes; "sterile area" means an area to which access is controlled by the inspection of persons and property in accordance with an approved security program.

HISTORY: Codes, 1880, §§ 969, 2967; 1892, § 1315; 1906, § 1389; Hemingway's 1917, § 1132; 1930, § 1163; 1942, § 2406; Laws, 2001, ch. 475, § 1, eff from and after passage (approved Mar. 23, 2001).

Cross References — Disclaimer and tender of amends in actions for trespass on land, see § 11-7-73.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Malice or willfulness.
3. Affidavit charging offense.
4. Instructions.

1. In general.

Under the direct remand rule, the evidence was sufficient to uphold a conviction of trespass under Miss. Code Ann. § 97-17-87 (Rev. 2006) given the testimony that defendant was either a principle or an aider and abetter of the trespass. Jefferson v. State, 977 So. 2d 431, 2008 Miss. App. LEXIS 165 (Miss. Ct. App. 2008).

Sufficient evidence existed to convict defendant of trespass in violation of Miss. Code Ann. § 97-17-87 as the evidence was uncontroverted that defendant did not have permission to enter the victim's shed, and the victim was able to positively identify him because she had seen him in the shed twice. Hill v. State, 929 So. 2d 338, 2005 Miss. App. LEXIS 988 (Miss. Ct. App. 2005).

Trespass is necessarily a component of every burglary, and where evidence was insufficient to sustain a jury verdict on the greater charge defendant was guilty of constituent offense of trespass under § 97-17-87. Anderson v. State, 290 So. 2d 628, 1974 Miss. LEXIS 1715 (Miss. 1974).

Where a prosecution charging trespass upon land originated in the district of a certain justice of the peace, a justice of the peace of another district of the same county was not without jurisdiction to try the case, since the jurisdiction of every justice of the peace is co-extensive with his county, and he is authorized to issue any process in matters within his jurisdiction, to be executed in any part of his county. Walker v. State, 192 Miss. 409, 6 So. 2d 127, 1942 Miss. LEXIS 25 (Miss. 1942).

Cutting of fence wholly owned by defendant could not constitute "trespass." Evans v. State, 159 Miss. 870, 132 So. 455, 1931 Miss. LEXIS 69 (Miss. 1931).

Homicide not reduced to manslaughter because deceased was a trespasser. Atkinson v. State, 137 Miss. 42, 101 So. 490, 1924 Miss. LEXIS 195 (Miss. 1924).

Gratuitous licensor held not guilty of tearing down and removing a fence. Card v. State, 123 Miss. 702, 86 So. 460, 1920 Miss. LEXIS 71 (Miss. 1920).

2. Malice or willfulness.

Evidence that the trespass was wilful and intentional, and that the defendant did not act in good faith and with reasonable prudence under the belief that the line was their own, warranted his conviction of wilful trespass. Johnston v. State, 232 Miss. 102, 98 So. 2d 445, 1957 Miss. LEXIS 449 (Miss. 1957).

Defendant whose employees cut trees on lands of another without consent of owner and without authority or direction from defendant is not criminally liable for fine and jail sentence under civil doctrine of respondeat superior, but proof must show that defendant himself willfully and knowingly cut and removed timber of another, or that he authorized his employees to do so. Smith v. State, 205 Miss. 170, 38 So. 2d 698, 1949 Miss. LEXIS 423 (Miss. 1949).

Defendant could not be convicted of trespass under this section [Code 1942, § 2406] where his cow, which he had staked out on his own premises in close proximity to line fence, damaged the fence and entered upon adjoining lot of the prosecuting witness, in the absence of proof that defendant intended to wilfully damage the property of the prosecuting witness through the agency of his cow. Wilson v. State, 198 Miss. 828, 23 So. 2d 684, 1945 Miss. LEXIS 255 (Miss. 1945).

Dipping vat inspectors going on premises and taking mules in supposed performance of duties held not guilty of criminal trespass. Bacot v. State, 158 Miss. 258, 130 So. 282, 1930 Miss. LEXIS 41 (Miss. 1930).

Defendant may be convicted under this section [Code 1942, § 2406] although the trespass was the direct consequence of defendant's violation of Code 1892, § 3902 (Code 1906, § 4412), and gross negligence may supply both malice and wilfulness. Porter v. State, 83 Miss. 23, 35 So. 218, 1903 Miss. LEXIS 7 (Miss. 1903).

One maliciously injuring real property by tearing down and removing a fence therefrom is guilty of malicious trespass. City of Greenville v. Laurent, 75 Miss. 456, 23 So. 185, 1897 Miss. LEXIS 139 (Miss. 1897).

3. Affidavit charging offense.

Where an affidavit set forth the facts of an alleged trespass and incorrectly stated that the trespass occurred contrary to the provisions of Code 1942, § 2411, and proof at the trial showed that the trespass occurred in an uninclosed rather than an inclosed area, the motion of the district attorney to strike from the affidavit the reference to Code 1942, § 2411 was properly granted, for the amendment changed no facts with which the defendant was charged in the affidavit and could not have prejudiced him. Shields v. State, 203 So. 2d 78, 1967 Miss. LEXIS 1354 (Miss. 1967).

In a prosecution on a charge of trespass on land, the affidavit of the complainant, which failed to describe the land, was at most only defective and not void, and might be amended by the furnishing of an accurate description of the land. Walker v. State, 192 Miss. 409, 6 So. 2d 127, 1942 Miss. LEXIS 25 (Miss. 1942).

Conviction for wilful and malicious trespass requires allegations and proof of ownership of property trespassed on. Adams v. State, 152 Miss. 220, 119 So. 189, 1928 Miss. LEXIS 255 (Miss. 1928); Johnston v. State, 232 Miss. 102, 98 So. 2d 445, 1957 Miss. LEXIS 449 (Miss. 1957).

4. Instructions.

In a case in which defendant was convicted of burglary, the trial court erred by refusing to give a jury instruction on the lesser included offense of trespass. Considering all reasonable inferences in defendant's favor, the appellate court found that he presented a viable alternative explanation of his presence in a church. Grayer v. State, 291 So. 3d 8, 2019 Miss. App. LEXIS 372 (Miss. Ct. App. 2019).

There was sufficient evidence to support a lesser-included-offense trespass instruction in the record, as defendant's girlfriend's son testified that it was his idea to go to a victim's apartment and vandalize it, and he also testified that defendant was in the apartment with him, but that defendant only watched him throw things around. Barnes v. State, 158 So. 3d 1127, 2015 Miss. LEXIS 101 (Miss. 2015).

Jury instruction for the lesser-included offense of trespass was not warranted where a lack of evidence in the record failed to show that defendant was guilty of trespass where, even if defendant was legally on the property at the request of his female friend, he was still seen peeping into a window, was chased for at least 250 yards, and was caught with his zipper down and underwear exposed. Ledford v. State, 874 So. 2d 995, 2004 Miss. App. LEXIS 170 (Miss. Ct. App.), cert. denied, 882 So. 2d 772, 2004 Miss. LEXIS 1114 (Miss. 2004).

A defendant in a burglary prosecution was entitled to an instruction on the lesser included offense of trespass where the person who lived in the house in question testified that the first time the defendant entered her house he did so without her knowledge or consent and she only discovered him as he came out of her bathroom, and that the second time he entered the house he kicked in the door after she closed the door and locked him out when she went to get some money the defendant claimed he had left inside the house, and another witness testified that the person who lived in the house voluntarily let the defendant in the first time. Robinson v. State, 589 So. 2d 116, 1991 Miss. LEXIS 766 (Miss. 1991).

There is no such thing as "simple trespass" known to the laws of this state; and where in a prosecution for wilful or malicious trespass the court instructed the jury that if they found beyond a reasonable doubt that the defendants unlawfully and wilfully trespassed upon certain property they should find the defendants guilty of a simple trespass, such charge was equivalent to instructing the jury to return a verdict of not guilty even though the state proved its case beyond a reasonable doubt. Howell v. State, 183 Miss. 293, 184 So. 326, 1938 Miss. LEXIS 242 (Miss. 1938).

RESEARCH REFERENCES

ALR.

Validity and construction of statute or ordinance forbidding unauthorized persons to enter upon or remain in school building or premises. 50 A.L.R.3d 340.

Am. Jur.

75 Am. Jur. 2d, Trespass §§ 132 et seq.

CJS.

87 C.J.S., Trespass § 153.

§ 97-17-89. Trespass; destruction or carrying away of vegetation, etc. not amounting to larceny.

Any person who shall enter upon the closed or unenclosed lands of another or of the public and who shall willfully and wantonly gather and unlawfully sever, destroy, carry away or injure any trees, shrubs, flowers, moss, grain, turf, grass, hay, fruits, nuts or vegetables thereon, where such action shall not amount to larceny, shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding five hundred dollars ($500.00), or be imprisoned not exceeding six (6) months in the county jail, or both; and a verdict of guilty of such action may be rendered under an indictment for larceny, if the evidence shall not warrant a verdict of guilty of larceny, but shall warrant a conviction under this section.

HISTORY: Codes, 1942, § 2411.5; Laws, 1958, ch. 264; Laws, 1962, ch. 323, § 3.

Cross References — Prohibition on removal of pecans falling from private orchards onto public rights-of-way during harvesting season, see §§ 69-33-1 et seq.

Going upon enclosed land of another, see § 97-17-85.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am. Jur.
75 Am. Jur. 2d, Trespass §§ 132 et seq.

CJS.
87 C.J.S., Trespass § 137.

Law Reviews.
Ogletree, A primer concerning industrial timber litigation with emphasis upon Mississippi law. 59 Miss. L. J. 387, Fall 1989.

§ 97-17-91. Trespass; defacing, altering or destroying notices posted on land.

Any person who shall deface, remove, alter or destroy any notice placed upon any lands by the owner thereof or his agent posting or otherwise prohibiting the entrance upon any lands in this state shall, upon conviction, be fined not more than fifty dollars ($50.00) for each such notice defaced, removed, altered or destroyed.

HISTORY: Codes, 1942, § 2409.3; Laws, 1962, ch. 323, § 2.

Cross References — Entering upon lands of another without permission, see § 97-17-93.

RESEARCH REFERENCES

Am. Jur.
75 Am. Jur. 2d, Trespass §§ 132 et seq.

CJS.
87 C.J.S., Trespass § 138.

§ 97-17-93. Entering lands of another without permission; enforcement; relation to other statutes; dismissal of prosecution.

(1) Any person who knowingly enters the lands of another without the permission of or without being accompanied by the landowner or the lessee of the land, or the agent of such landowner or lessee, shall be guilty of a misdemeanor and, upon conviction, shall be punished for the first offense by a fine of Two Hundred Fifty Dollars ($250.00). Upon conviction of any person for a second or subsequent offense, the offenses being committed within five (5) years of the last offense, such person shall be punished by a fine of Five Hundred Dollars ($500.00), and may be imprisoned in the county jail for a period of not less than ten (10) nor more than thirty (30) days, or by both such fine and imprisonment. This section shall not apply to the landowner's or lessee's family, guests, or agents, to a surveyor as provided in Section 73-13-103, or to persons entering upon such lands for lawful business purposes.

(2)(a) It shall be the duty of sheriffs, deputy sheriffs, constables and conservation officers to enforce this section.

(b) Such officers shall enforce this section by issuing a citation to those charged with trespassing under this section.

(3) The provisions of this section are supplementary to the provisions of any other statute of this state.

(4) A prosecution under the provisions of this section shall be dismissed upon the request of the landowner, lessee of the land or agent of such landowner or lessee, as the case may be.

HISTORY: Codes, 1892, § 1318; 1906, § 1392; Hemingway's 1917, § 1135; 1930, § 1166; 1942, § 2409; Laws, 1962, ch. 323, § 1; Laws, 1976, ch. 404; Laws, 1978, ch. 417, § 1; Laws, 1984, ch. 504; Laws, 1987, ch. 331; Laws, 1997, ch. 425, § 3; Laws, 2008, ch. 545, § 2, eff from and after July 1, 2008.

Cross References — Enforcement of this section by conservation officers, see § 49-1-13.

Hunting or fishing on the Sabbath, see § 49-7-61.

When it is unlawful to hunt on lands of others, see § 49-7-79.

Removing, damaging, or destroying notices on land, see § 97-17-91.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

Testimony of conservation official that official observed defendant's vehicle traveling on, and ultimately exiting from, property which has been properly posted for at least 3 months, that official found evidence that deer had been dragged from property and put into truck, and that defendant's vehicle was only one which could have been in area on night in question is sufficient to support conviction for trespass. Pharr v. State, 465 So. 2d 294, 1984 Miss. LEXIS 2033 (Miss. 1984).

This section [Code 1942, § 2409] does not limit right to post lands to owner of property and in any event this section would not be applicable to establish that defendant having been given permission to fence pasture land had exceeded his license by posting lands and thus became a trespasser ab initio so as to start running of statute of limitations. Anderson v. Anderson-Tully Co., 196 F.2d 684, 1952 U.S. App. LEXIS 2513 (5th Cir. Miss. 1952).

OPINIONS OF THE ATTORNEY GENERAL

Employees of the Mississippi Institute for Forest Inventory or persons performing under contract to the Institute should acquire landowner permission before entering the land to perform data collection duties. Tucker, Sept. 16, 2004, A.G. Op. 04-0414.

RESEARCH REFERENCES

ALR.
Entry on private lands in pursuit of wounded game as criminal trespass. 41 A.L.R.4th 805.

Am. Jur.
75 Am. Jur. 2d, Trespass §§ 132 et seq.

CJS.
87 C.J.S., Trespass § 138.

Law Reviews.
1984 Mississippi Supreme Court Review: Property. 55 Miss. L. J. 135, March, 1985.

§ 97-17-95. Trespass; entry on premises where atomic machinery, rockets and other dangerous devices are manufactured, etc.

It shall be unlawful for any person to wilfully enter or trespass within the premises of any person, firm or corporation manufacturing or constructing or erecting or assembling or maintaining or repairing or operating any nuclear powered machinery, equipment or vessels, or rockets, missiles, propulsion systems, explosives or other dangerous devices, or parts thereof, with the intent to commit any crime under the laws of this state, or of the United States, or pursuant to a conspiracy to commit any such crime or in an attempt to commit any such crime. Any person convicted of a violation of this section shall be adjudged guilty of a felony, and punished by a fine not to exceed five thousand dollars ($5,000.00) or by imprisonment in the state penitentiary not to exceed five (5) years, or both such fine and imprisonment, in the discretion of the court. Any person wilfully entering or trespassing within such premises, if found within any area designated as a restricted area therein, shall be guilty of a violation of this section.

HISTORY: Codes, 1942, § 2406.5; Laws, 1962, ch. 324, eff from and after passage (approved May 31, 1962).

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

RESEARCH REFERENCES

Am. Jur.
75 Am. Jur. 2d, Trespass §§ 132 et seq.

CJS.
87 C.J.S., Trespass § 137.

§ 97-17-97. Trespass; going into or upon, or remaining in or upon, buildings, premises or lands of another after being forbidden to do so.

(1) Except as otherwise provided in Section 73-13-103, if any person or persons shall without authority of law go into or upon or remain in or upon any building, premises or land of another, including the premises of any public housing authority after having been banned from returning to the premises of the housing authority, whether an individual, a corporation, partnership, or association, or any part, portion or area thereof, after having been forbidden to do so, either orally or in writing including any sign hereinafter mentioned, by any owner, or lessee, or custodian, or other authorized person, or by the administrators of a public housing authority regardless of whether or not having been invited onto the premises of the housing authority by a tenant, or after having been forbidden to do so by such sign or signs posted on, or in such building, premises or land, or part, or portion, or area thereof, at a place or places where such sign or signs may be reasonably seen, such person or persons shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than Five Hundred Dollars ($500.00) or by confinement in the county jail not exceeding six (6) months, or by both such fine and imprisonment.

(2) The provisions of this section are supplementary to the provisions of any other statute of this state.

HISTORY: Codes, 1942, § 2409.7; Laws, 1960, ch. 246, §§ 1, 2; Laws, 1997, ch. 471, § 1; Laws, 1997, ch. 425, § 4, eff from and after July 1, 1997.

Joint Legislative Committee Note — Section 4 of ch. 425, Laws, 1997, effective July 1, 1997, amended this section. Section 1 of ch. 471, Laws, 1997, effective March 27, 1997, also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision, and Publication authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision, and Publication ratified the integration of these amendments as consistent with the legislative intent at the May 8, 1997 meeting of the Committee.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Particular acts as constituting offense.
3. Jury instructions.

1. In general.

Probable cause existed to arrest the

defendant for a violation of this section where he was found on a driveway behind a county jail, the driveway was owned by the county and was never dedicated as a public thoroughfare, and he was on notice that the area was off-limits because he had previously been forbidden from coming into the area. Bigham v. Huffman, 1999 U.S. Dist. LEXIS 16542 (N.D. Miss. Oct. 9, 1999), aff'd, 218 F.3d 744, 2000 U.S. App. LEXIS 15292 (5th Cir. Miss. 2000).

An employee of a corporation had probable cause to file an affidavit charging plaintiff with trespass where the uncontradicted evidence showed that he had entered upon the corporation's lands not only on the logging trail over which there was a claim of proscriptive easement, but also along the pipeline right of way after he had been orally forbidden to do so; thus, even though plaintiff was acquitted on the trespass charge, he could not maintain a cause of action against the corporation and its employee for malicious prosecution. Ray Geophysical Div. of Mandrel Industries, Inc. v. O'Quin, 365 So. 2d 641, 1978 Miss. LEXIS 2427 (Miss. 1978).

A substantial charge of the offense is sufficient. Mitchell v. State, 240 Miss. 308, 127 So. 2d 394, 1961 Miss. LEXIS 462 (Miss. 1961).

2. Particular acts as constituting offense.

Premises liability action was dismissed on summary judgment because newly discovered evidence clearly established a customer's status as a trespasser at the time of her alleged abduction from a store's parking lot where the store was authorized to ban her from the store under Miss. Code Ann. § 97-23-17 after a prior shoplifting incident, the customer failed to show that store breached its duty to a trespasser, and store was immune from liability pursuant to Miss. Code Ann. § 97-17-103(2) where the customer had committed a criminal trespass under Miss. Code Ann. § 97-17-97 at the time of the incident. Bates v. Wal-Mart Stores, 413 F. Supp. 2d 763, 2006 U.S. Dist. LEXIS 2652 (S.D. Miss. 2006).

Plaintiff father's false arrest claim failed because there was probable cause to arrest for providing false information to police under Miss. Code Ann. § 97-35-47, as the father lied in stating that his daughter's boyfriend, who was under a no-contact order as to the daughter, had broken into the father's house, and telling the officers about the no-contact order could be construed as claiming that the boyfriend had violated the criminal trespass statute. Granger v. Slade, 361 F. Supp. 2d 588, 2005 U.S. Dist. LEXIS 5595 (S.D. Miss. 2005).

3. Jury instructions.

Defendant was properly convicted of burglary of an unoccupied dwelling because there was no basis to support a lesser-included offense instruction on trespass, and the circuit court did not err in refusing defendant's proposed instruction; defendant did not know the victims, there was clear evidence of a breaking and entering, and there was evidence of a clear intent to steal. Johnsey v. State, 296 So. 3d 93, 2019 Miss. App. LEXIS 511 (Miss. Ct. App. 2019), cert. denied, 293 So. 3d 832, 2020 Miss. LEXIS 220 (Miss. 2020).

OPINIONS OF THE ATTORNEY GENERAL

A constable has authority to carry a weapon on private property where property owner has restricted possession of weapons on the property only if he enters in performance of his official duties. Null, Dec. 12, 1997, A.G. Op. #97-0783.

RESEARCH REFERENCES

ALR.

Trespass: state prosecution for unauthorized entry, or occupation, for public demonstration purposes, of business, industrial, or utility premises. 41 A.L.R.4th 773.

Am. Jur.
75 Am. Jur. 2d, Trespass §§ 132 et seq.
48 Am. Jur. Proof of Facts 2d 153, Damages for Unauthorized Geophysical Exploration.

CJS.
87 C.J.S., Trespass § 138.

§ 97-17-99. Trespass; inciting or soliciting etc., persons to go into or upon, or remain in or upon, buildings, premises or lands of another.

(1) If any person or persons shall incite, or solicit, or urge, or encourage, or exhort, or instigate, or procure any other person or persons to go into or upon or to remain in or upon any building, or premises, or land of another whether an individual, a corporation, partnership, or association, or any part, portion or area thereof, knowing such other person or persons to have been forbidden, either orally or in writing including any sign hereinafter mentioned, to do so by any owner, or lessee, or custodian, or other authorized person, or knowing such other person or persons to have been forbidden to do so by a sign or signs posted in or upon such building, or premises, or land, or part, or portion thereof, at a place or places where it or they may be reasonably seen, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than five hundred dollars ($500.00) or by confinement in the county jail not exceeding six (6) months, or by both such fine and imprisonment.

(2) The provisions of this section are supplementary to the provisions of any other statute of this state.

HISTORY: Codes, 1942, § 2409.5; Laws, 1960, ch. 245, §§ 1, 2.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am. Jur.
75 Am. Jur. 2d, Trespass §§ 132 et seq.

CJS.
87 C.J.S., Trespass § 141.

§ 97-17-101. Repealed.

Repealed by Laws, 1989, ch. 469, § 9, eff from and after July 1, 1989.
§ 97-17-101. [Laws, 1980, ch. 368]

Editor's Notes — Former Section 97-17-101 related to the mutilation of motor vehicle or farm implement identification numbers.

Laws of 1989, ch. 469, § 10, provides as follows:

"SECTION 10. If any section, paragraph, sentence, clause, phrase or any part of this act shall be held invalid or unconstitutional, such holding shall not affect any other section, paragraph, sentence, clause, phrase or part of this act which is not in and of itself invalid or unconstitutional. Moreover, if the application of this act, or of any portion of it, to any person or circumstance is held invalid, the invalidity shall not affect the application of this act to other persons or circumstances which can be given effect without the invalid provision or application."

§ 97-17-103. Prohibition of recovery for injuries sustained during criminal trespass.

(1) As used in this section:

(a) "Perpetrator" means a person who has engaged in criminal trespass and includes a person convicted of trespass under applicable state law;

(b) "Victim" means a person who was the object of another's criminal trespass and includes a person at the scene of an emergency who gives reasonable assistance to another person who is exposed to or has suffered grave physical harm;

(c) "Course of criminal conduct" includes the acts or omissions of a victim in resisting criminal conduct;

(d) "Convicted" includes a finding of guilt, whether or not the adjudication of guilt is stayed or executed, an unwithdrawn judicial admission of guilt or guilty plea, a no contest plea, a judgment of conviction, an adjudication as a delinquent child, an admission to a juvenile delinquency petition, or a disposition as an extended jurisdiction juvenile; and

(e) "Trespass" means an offense named in Sections 97-17-1 through 97-17-97, Mississippi Code of 1972, or any attempt to commit any of these offenses. Trespass includes crimes in other states or jurisdictions which would have been within the definition set forth in this subdivision if they had been committed in this state.

(2) A perpetrator assumes the risk of loss, injury or death resulting from or arising out of a course of criminal trespass, as defined in this section, engaged in by the perpetrator or an accomplice, and the crime victim is immune from and not liable for any civil damages as a result of acts or omissions of the victim.

(3) Notwithstanding other evidence which the victim may adduce relating to the perpetrator's conviction of the crime involving the parties to the civil action, a certified copy of a guilty plea, a court judgment of guilt, a court record of conviction or an adjudication as a delinquent child is conclusive proof of the perpetrator's assumption of the risk.

(4) In a civil action that is subject to this section, the court shall award reasonable expenses, including attorney's fees and disbursements, to the prevailing party.

(5) Except to the extent needed to preserve evidence, any civil action in which the defense set forth in subsection (2) is raised shall be stayed by the court on the motion of the defendant during the pendency of any criminal action against the plaintiff based on the alleged trespass.

HISTORY: Laws, 1997, ch. 471, § 2, eff from and after passage (approved March 27, 1997).

JUDICIAL DECISIONS

1. Victim immune from liability to trespasser.

Premises liability action was dismissed on summary judgment because newly discovered evidence clearly established a customer's status as a trespasser at the time of her alleged abduction from a store's parking lot where the store was authorized to ban her from the store under Miss. Code Ann. § 97-23-17 after a prior shoplifting incident, the customer failed to show that store breached its duty to a trespasser, and store was immune from liability pursuant to Miss. Code Ann. § 97-17-103(2) where the customer had committed a criminal trespass under Miss. Code Ann. § 97-17-97 at the time of the incident. Bates v. Wal-Mart Stores, 413 F. Supp. 2d 763, 2006 U.S. Dist. LEXIS 2652 (S.D. Miss. 2006).

DEFENDANT'S LIABILITY FOR VALUE OF PROPERTY DAMAGED, DESTROYED, TAKEN OR CONVERTED [REPEALED]

Sec.
97-17-121 through 97-17-127. Repealed.

§§ 97-17-121 through 97-17-127. Repealed.

Repealed by Laws, 1978, ch. 400, § 11, eff from and after July 1, 1978.
§ 97-17-121. [Laws, 1977, ch. 403, § 1]
§ 97-17-123. [Laws, 1977, ch. 403, § 2]
§ 97-17-125. [Laws, 1977, ch. 403, § 3]
§ 97-17-127. [Laws, 1977, ch. 403, § 4]

Editor's Notes — Former §§ 97-17-121 through 97-17-127 made any person convicted of a crime against property, as set out in Chapter 17, Title 97, Mississippi Code of 1972, liable for restitution to any person having a property interest in any property damaged, destroyed, taken or converted in the commission of such crime.

Restitution to victims of crimes is now governed by the provisions of § 99-37-1 et seq.

LARCENY OF CONSIGNED MOTOR FUEL

Sec.	
97-17-201.	Definition of consigned motor fuel.
97-17-203.	Written consignment agreement required.
97-17-205.	Taking consigned motor fuels without consent of consignor and in violation of written consignment agreement.
97-17-207.	Penalties.

§ 97-17-201. Definition of consigned motor fuel.

As used in Sections 97-17-201 through 97-17-207, the term "consigned motor fuels" means all grades of gasoline including gasohol or any gasoline blend, any grade of diesel or kerosene and all aviation fuels that are delivered or caused to be delivered by one (1) merchant, hereinafter designated the consignor, to another merchant who deals in goods of that kind for the purpose of sale, hereinafter designated the consignee, and which are not owned by the consignee, but remain the property of the consignor.

HISTORY: Laws, 2019, ch. 428, § 1, eff from and after July 1, 2019.

§ 97-17-203. Written consignment agreement required.

(1) There shall be a written agreement between the consignor and the consignee, reflecting not only the consignment agreement between the parties, but that title to the consigned motor fuels and to the proceeds from the sale of the consigned motor fuels is always vested in the consignor and never the consignee.

(2) Nothing in this section shall be construed to create a new or additional element necessary to prove the commission of theft of property in any degree.

HISTORY: Laws, 2019, ch. 428, § 2, eff from and after July 1, 2019.

§ 97-17-205. Taking consigned motor fuels without consent of consignor and in violation of written consignment agreement.

It shall be unlawful for any person to take, use, sell or dispose of consigned motor fuels, or the proceeds from the sale of consigned motor fuels, without the consent of the consignor and in violation of the written agreement required in Section 97-17-203.

HISTORY: Laws, 2019, ch. 428, § 3, eff from and after July 1, 2019.

§ 97-17-207. Penalties.

A person who violates Sections 97-17-201 through 97-17-207 shall be guilty of larceny of consigned motor fuels and subject to those penalties provided in Section 97-17-41 or 97-17-43 based on value of the property taken.

HISTORY: Laws, 2019, ch. 428, § 4, eff from and after July 1, 2019.

CHAPTER 19.

FALSE PRETENSES AND CHEATS

Sec.	
97-19-1.	Repealed.
97-19-3.	Repealed.
97-19-5.	Citation of Sections 97-19-5 through 97-19-29.
97-19-7.	Credit cards; construction of provisions.
97-19-9.	Credit cards; definitions.
97-19-11.	Credit cards; procuring issuance by false statements.
97-19-13.	Credit cards; acquisition by theft or artifice; unlawful sales and purchases; receipt of cards issued in another's name.
97-19-15.	Credit cards; controlling card as security for debt.
97-19-17.	Credit cards; forgery.
97-19-19.	Credit cards; signing with intent to defraud.
97-19-21.	Credit cards; use to obtain things of value or to operate automatic cash dispensing machines with intent to defraud; penalties.
97-19-23.	Credit cards; furnishing things of value on forged or unlawfully obtained card; failing to give value represented as given.
97-19-25.	Credit cards; possession of incomplete cards or plates and devices for their reproduction.
97-19-27.	Credit cards; receipt of things of value in violation of law.
97-19-29.	Credit cards; penalty for violation of Sections 97-19-5 through 97-19-29.
97-19-31.	Credit cards; use of credit numbers or other credit device to obtain credit, goods, property or services.
97-19-32.	Credit cards; possession of scanning device or reencoder without permission of cardholder; scanning or reencoding with intent to defraud; penalties.
97-19-33.	False personation; personating another to marry, become bail or surety, confess judgment, acknowledge recorded instrument, or act in suit.
97-19-35.	False personation; personating another to receive money or property.
97-19-37.	False personation; masquerading as deaf person.
97-19-39.	Obtaining signature or thing of value with intent to defraud.
97-19-41.	Obtaining signature or thing of value with intent to defraud; penalty for using false negotiable instrument.
97-19-43.	Patriotic and fraternal organizations; unauthorized use of membership buttons, insignia, etc.
97-19-45.	Producing child with intent to intercept inheritance.
97-19-47.	Receiving deposits when bank is insolvent.
97-19-49.	Registering animal falsely; giving false pedigree.
97-19-51.	Selling property previously sold or encumbered.
97-19-53.	Substituting child to deceive parent or guardian.
97-19-55.	Bad checks, electronically converted checks or electronic commercial debits and insufficient funds.
97-19-57.	Bad checks, electronically converted checks, electronic commercial debits; presumption of fraudulent intent; notice that check or electronic fund transfer has not been paid; notice returned undelivered as evidence of intent to defraud; transactions involving motor vehicles.
97-19-59.	Repealed.
97-19-61.	Bad checks, electronically converted check, electronic commercial debit; when notice need not be given.
97-19-62.	Bad checks, electronically converted checks, electronic commercial debits; evidence of identity of party issuing, uttering or delivering check or party authorized to draw upon named account.

Sec.
97-19-63. Bad checks, electronically converted checks, electronic commercial debits; statement of reason for dishonor.
97-19-65. Bad checks, electronically converted checks, electronic commercial debits; each violation constitutes a separate offense.
97-19-67. Bad checks, electronically converted checks, electronic commercial debits; penalties; restitution.
97-19-69. Bad checks, electronically converted checks, electronic commercial debits; non-liability for causing arrest or imprisonment of drawer.
97-19-71. Fraud in connection with state or federally funded assistance programs; penalty.
97-19-73. District attorney authorized to assist in recovery and distribution of restitution from persons issuing bad checks; construction of Sections 97-19-73 through 97-19-79.
97-19-75. Bad check complaint procedures; restitution procedures.
97-19-77. Accounting and distribution of monies received with respect to bad check complaint.
97-19-79. District attorney to file court complaint upon failure of accused to make restitution.
97-19-81. Right of lender to add fee to amount of loan when payment on loan made with bad check.
97-19-83. Fraud by mail or other means of communication.
97-19-85. Fraudulent use of identity, Social Security number, credit card or debit card number or other identifying information to obtain thing of value.

§ 97-19-1. Repealed.

Repealed by Laws, 1972, ch. 476, § 10, eff from and after July 1, 1972.

§ 97-19-1. [Codes, 1942, § 2153; Laws, 1932, ch. 299; Laws, 1948, ch. 403; Laws, 1950, ch. 316; Laws, 1958, ch. 282; Laws, 1970, ch. 342, § 1]

Editor's Notes — Former § 97-19-1 related to bad checks. For similar provisions, see § 97-19-55 et seq.

§ 97-19-3. Repealed.

Repealed by Laws, 1982, ch. 423, § 27, eff from and after March 31, 1982.

§ 97-19-3. [Codes, 1930, § 925; 1942, § 2154; Laws, 1924, ch. 172; Laws, 1981, ch. 471, § 53]

Editor's Notes — Former § 97-19-3 was entitled: Bad checks; form of affidavit in case of non-payment. For similar provisions, see § 97-19-55 et seq.

§ 97-19-5. Citation of Sections 97-19-5 through 97-19-29.

Sections 97-19-5 through 97-19-29 shall be known as the "Mississippi Credit Card Crime Law of 1968."

HISTORY: Codes, 1942, § 2148.7-01; Laws, 1968, ch. 345, § 1, eff 60 days after passage (approved August 8, 1968).

Cross References — Use of credit numbers or other devices to obtain credit, goods, etc., see § 97-19-31.

RESEARCH REFERENCES

ALR.

Criminal Liability for Unauthorized Use of Credit Card under State Credit Card Statutes. 68 A.L.R.6th 527.

Practice References.

Ronald L. Schoenberg, Criminal Law Deskbook (Matthew Bender).

§ 97-19-7. Credit cards; construction of provisions.

Sections 97-19-5 through 97-19-29 shall not be construed so as to preclude the applicability of any other provision of the criminal law of this state which presently applies or may in the future apply to any transaction which violates said sections, unless such provision is inconsistent with the terms of said sections.

HISTORY: Codes, 1942, § 2148.7-13; Laws, 1968, ch. 345, § 13, eff 60 days after passage (approved August 8, 1968).

§ 97-19-9. Credit cards; definitions.

The following words and phrases as used in Sections 97-19-5 through 97-19-29 shall have the following meanings ascribed to them, unless a different meaning is plainly required by the context:

(a) "Cardholder" is defined as the person or organization named on the face of a credit card, as defined hereinafter, to whom or for whose benefit the credit card is issued by an issuer.

(b) "Credit card" is defined as any instrument or device, whether known as a credit card, credit plate or by any other name, issued with or without fee by an issuer for the use of the cardholder or one authorized by him in obtaining money, goods, property, services or anything else of value on credit or in consideration of an undertaking or guaranty of the issuer of the payment of a check or draft drawn by the cardholder or one authorized by him, and shall include a card issued by a financial institution to be used in operating an automatic unmanned cash dispensing machine.

(c) "Expired credit card" means a credit card which is no longer valid because the term shown on its face has elapsed.

(d) "Issuer" is defined as any business organization or financial institution, including but not limited to merchants, state and national banks, and any and all other persons, firms, corporations, trusts, and organizations, or any duly authorized agent thereof, which issues a credit card.

(e) "Receives" or "receiving" is defined as acquiring possession of or control of or accepting as security for a loan a credit card.

(f) "Revoked credit card" is defined as a credit card which is no longer valid because permission to use it has been suspended or terminated by the issuer.

(g) A credit card is "incomplete" if part of the matter other than the signature of the cardholder which an issuer requires to appear on the credit card before it can be used by a cardholder has not been stamped, embossed, imprinted or written on said card.

(h) A person "falsely makes" a credit card when he makes or draws in whole or in part a device or instrument which purports to be the credit card of a named issuer, but which is not in fact such a credit card because the issuer did not authorize the making or drawing of said card; or when one materially alters a credit card which was validly issued.

(i) A person "falsely embosses" a credit card when, without the authorization of the named issuer, he completes a credit card by adding any other matter than the signature of the cardholder which an issuer requires to appear on the credit card before it can be used by a cardholder.

HISTORY: Codes, 1942, § 2148.7-02; Laws, 1968, ch. 345, § 2; Laws, 1979, ch. 402, § 1, eff from and after July 1, 1979.

Cross References — Violation of this section as misdemeanor, and punishment therefor, see § 97-19-29.

Computer crimes, see § 97-45-1.

JUDICIAL DECISIONS

1. Credit card.

Evidence was sufficient to convict defendant of two counts of credit card fraud after using a stolen debit card to purchase clothing from two stores because the store employees testified that defendant signed receipts in both stores, as was customary in credit-card transactions; and, regardless of the chosen label, the fraudulently used card fell within the broad definition of "credit card" in this statute. McClendon v. State, 124 So. 3d 709, 2013 Miss. App. LEXIS 394 (Miss. Ct. App. 2013).

RESEARCH REFERENCES

Am. Jur.

7 Am. Jur. Legal Forms 2d, Credit Cards §§ 78:11 et seq. (issuer-merchant transactions); §§ 78:21 et seq. (issuer-card holder transactions).

§ 97-19-11. Credit cards; procuring issuance by false statements.

Any person who makes or causes to be made either directly or indirectly any false statement in writing with intent that it be relied upon with respect to his identity or that of any other person, firm or corporation, for the purpose of procuring the issuance of a credit card is guilty of a misdemeanor.

HISTORY: Codes, 1942, § 2148.7-03; Laws, 1968, ch. 345, § 3, eff 60 days after passage (approved August 8, 1968).

Cross References — White-collar crime investigations, see § 7-5-59.

Acquisition of credit cards by theft or artifice, etc., see § 97-19-13.

Unlawful to use credit card or credit card number, obtained or retained in violation of this section, to obtain a thing of value, see § 97-19-21.

Violation of this section as misdemeanor, and punishment therefor, see § 97-19-29.

RESEARCH REFERENCES

ALR.
What constitutes violation of § 134 of Consumer Credit Protection Act (15 USCS § 1644), prohibiting fraudulent use of credit card. 72 A.L.R. Fed. 65.

CJS.
35 C.J.S., False Pretenses §§ 30, 31.

§ 97-19-13. Credit cards; acquisition by theft or artifice; unlawful sales and purchases; receipt of cards issued in another's name.

A person who takes a credit card from the person, possession, custody or control of another by acts constituting statutory larceny, common law larceny by trespassory taking, common law larceny by trick, embezzlement, false pretense or extortion, or by any other method known to the criminal law of this state, without the cardholder's consent, or who, with knowledge that a credit card has been so taken, receives the credit card with intent to use it or to sell it or to transfer it to a person other than the issuer or the cardholder or one authorized by him to receive it is guilty of credit card theft.

A person other than the issuer who sells a credit card or a person who buys a credit card from a person other than the issuer violates Sections 97-19-5 to 97-19-29.

Any person other than the issuer or cardholder or members of his immediate family who, during any consecutive twelve-month period, receives two (2) or more credit cards not issued in his name and which cards he has reason to know were taken or retained under circumstances which constitute credit card theft under this section or a violation of Section 97-19-11 is considered to be in violation of Sections 97-19-5 through 97-19-29.

HISTORY: Codes, 1942, § 2148.7-04; Laws, 1968, ch. 345, § 4, eff 60 days after passage (approved August 8, 1968).

Cross References — White-collar crime investigations, see § 7-5-59.
Violation of this section as misdemeanor, and punishment therefor, see § 97-19-29.

RESEARCH REFERENCES

ALR.
Criminal liability for unauthorized use of credit card. 24 A.L.R.3d 986.

Am. Jur.
20 Am. Jur. 2d, Credit Cards and Charge Accounts § 28.

§ 97-19-15. Credit cards; controlling card as security for debt.

Any person, who, with intent to defraud the issuer, a person or organization providing money, goods, property, services or anything else of value, or any other person, obtains control of a credit card as security for debt is guilty of a misdemeanor.

HISTORY: Codes, 1942, § 2148.7-05; Laws, 1968, ch. 345, § 5, eff 60 days after passage (approved August 8, 1968).

Cross References — White-collar crime investigations, see § 7-5-59.
Unlawful to use credit card or credit card number, obtained or retained in violation of this section, to obtain a thing of value, see § 97-19-21.
Violation of this section as misdemeanor, and punishment therefor, see § 97-19-29.

§ 97-19-17. Credit cards; forgery.

Every person who, with intent to defraud a purported cardholder, issuer, or a person or organization providing money, goods, property, services or anything else of value, falsely makes or alters or embosses a card purporting to be a credit card or other such credit device is guilty of credit card forgery.

HISTORY: Codes, 1942, § 2148.7-06; Laws, 1968, ch 345, § 6, eff 60 days after passage (approved August 8, 1968).

Cross References — White-collar crime investigation, see § 7-5-59.
Unlawful to use credit card or credit card number, obtained or retained in violation of this section, to obtain a thing of value, see § 97-19-21.
Violation of this section as misdemeanor, and punishment therefor, see § 97-19-29.
Forgery, generally, see §§ 97-21-1 et seq.

RESEARCH REFERENCES

Am. Jur.
20 Am. Jur. 2d, Credit Cards and Charge Accounts § 27.

§ 97-19-19. Credit cards; signing with intent to defraud.

Any person other than the cardholder or a person authorized by him, who, with intent to defraud the cardholder, issuer, or a person or organization providing money, goods, property, services, or anything else of value, signs a credit card, violates Sections 97-19-5 through 97-19-29.

HISTORY: Codes, 1942, § 2148.7-07; Laws, 1968, ch. 345, § 7, eff 60 days after passage (approved August 8, 1968).

Cross References — White-collar crime investigation, see § 7-5-59.
Violation of this section as misdemeanor, and punishment therefor, see § 97-19-29.

RESEARCH REFERENCES

ALR.
What constitutes violation of § 134 of Consumer Credit Protection Act (15 USCS § 1644), prohibiting fraudulent use of credit card. 72 A.L.R. Fed. 65.

Am. Jur.
20 Am. Jur. 2d, Credit Cards § 35.

§ 97-19-21. Credit cards; use to obtain things of value or to operate automatic cash dispensing machines with intent to defraud; penalties.

(1) It is unlawful for any person, with intent to defraud the cardholder, the issuer, a person or organization providing money, goods, property, services or anything else of value, or any other person, (a) to use a credit card or credit card number obtained or retained in violation of Sections 97-19-5 through 97-19-29, or a credit card which he knows is forged, for the purpose of obtaining money, goods, property, services or anything else of value, or (b) to obtain money, goods, property, services or anything else of value (i) by representing without the consent of the cardholder that he is the holder of a specified card, or (ii) by representing that he is the holder of a card when he has reason to know that such card has not in fact been issued, or (iii) by representing that he has been authorized to use the credit card or credit card number.

(2) It is unlawful for any person, with intent to defraud the cardholder or issuer of a credit card used in the operation of an automatic unmanned cash dispensing machine, to use such card for the purpose of obtaining money from such machine.

(3) Any person convicted for a violation of subsection (1) or (2) of this section shall be punished as follows:

(a) For a first offense of violating subsection (1) or (2) of this section, whenever the value of the money, goods, property, services or other thing of value obtained or attempted to be obtained is less than One Hundred Dollars ($100.00), the person committing the offense shall be punished by a fine not to exceed One Thousand Dollars ($1,000.00), or by imprisonment in the county jail for a term not to exceed one (1) year, or by both such fine and imprisonment.

(b) For a second or subsequent offense of violating subsection (1) or (2) of this section, whenever the value of the money, goods, property, services or other thing of value obtained or attempted to be obtained is less than One Hundred Dollars ($100.00), the person committing the offense shall be guilty of a felony and, upon conviction, shall be punished by a fine of not less than One Hundred Dollars ($100.00) nor more than One Thousand Dollars ($1,000.00), or by imprisonment in the State Penitentiary for a term not to exceed three (3) years, or by both such fine and imprisonment.

(c) Whenever the value of the money, goods, property, services or other thing of value obtained or attempted to be obtained is One Hundred Dollars ($100.00) or more, the person committing the offense, whether the offense is a first, second or subsequent offense, shall be guilty of a felony and such person, upon conviction, shall be punished as provided in paragraph (b) of this subsection (3).

(4) For the purpose of determining the punishment to be imposed under subsection (3) of this section, the value of all money, goods, property, services and other things of value obtained or attempted to be obtained by two (2) or more uses of the same credit card shall be aggregated.

HISTORY: Codes, 1942, § 2148.7-08; Laws, 1968, ch. 345, § 8; Laws, 1979, ch. 402, § 2; Laws, 1992, ch. 384, § 1, eff from and after July 1, 1992.

Joint Legislative Committee Notes — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in (3)(c). The phrase "paragraph (3)(b) of this section" was changed to "paragraph (b) of this subsection (3)." The Joint Committee ratified this correction at its October 19, 2020, meeting.

Cross References — White-collar crime investigation, see § 7-5-59.

Violation of this section as misdemeanor, and punishment therefor, see § 97-19-29.

Obtaining goods, etc., by use of credit devices, see § 97-19-31.

JUDICIAL DECISIONS

1. Evidence.

Evidence was sufficient to convict defendant of two counts of credit card fraud after using a stolen debit card to purchase clothing from two stores because the store employees testified that defendant signed receipts in both stores, as was customary in credit card transactions; and, regardless of the chosen label, the fraudulently used card fell within the broad definition of "credit card" for purposes of the false pretenses and cheats crimes. McClendon v. State, 124 So. 3d 709, 2013 Miss. App. LEXIS 394 (Miss. Ct. App. 2013).

RESEARCH REFERENCES

Am. Jur.

20 Am. Jur. 2d, Credit Cards § 36.

20 Am. Jur. Pl & Pr Forms (Rev), Premises Liability, Form 74.1 (complaint, petition, or declaration by bank customer, robbery of customer while using automated teller machine).

CJS.

35 C.J.S., False Pretenses §§ 30, 31.

§ 97-19-23. Credit cards; furnishing things of value on forged or unlawfully obtained card; failing to give value represented as given.

Any person or any agent of said person who is authorized to furnish money, goods, property, services, or anything else of value upon presentation of a credit card by the cardholder or one authorized by him, who, with intent to defraud the issuer, furnishes money, goods, property, services, or anything of value upon presentation of a credit card which he knows to have been obtained in violation of Sections 97-19-5 through 97-19-29 or a credit card which he knows to be forged, is considered to be in violation of said sections.

Any person or any agent of said person who is authorized by an issuer to furnish money, goods, property, services, or anything else of value upon presentation of a credit card by the cardholder or one authorized by him, who with intent to defraud the issuer or the cardholder, fails to furnish money, goods, property, services, or anything else of value which he represents in writing to the issuer to have been furnished, is guilty of violation of Sections 97-19-5 through 97-19-29.

HISTORY: Codes, 1942, § 2148.7-09; Laws, 1968, ch. 345, § 9, eff 60 days after passage (approved August 8, 1968).

Cross References — White-collar crime investigation, see § 7-5-59.
Violation of this section as misdemeanor, and punishment therefor, see § 97-19-29.

RESEARCH REFERENCES

Am. Jur.
20 Am. Jur. 2d, Credit Cards § 36.

§ 97-19-25. Credit cards; possession of incomplete cards or plates and devices for their reproduction.

Any person other than the cardholder or one authorized by him possessing two (2) or more incomplete credit cards, with the intent to complete them without the consent of the issuer or the cardholder, or a person possessing, with knowledge of their character, machinery, plates, or any other contrivance designed to reproduce instruments purporting to be credit cards of an issuer who has not in fact consented to the preparation of such credit cards, is guilty of a misdemeanor.

HISTORY: Codes, 1942, § 2148.7-10; Laws, 1968, ch. 345, § 10, eff 60 days after passage (approved August 8, 1968).

Cross References — White-collar crime investigation, see § 7-5-59.
Unlawful to use credit card or credit card number, obtained or retained in violation of this section, to obtain a thing of value, see § 97-19-21.
Violation of this section as misdemeanor, and punishment therefor, see § 97-19-29.

RESEARCH REFERENCES

Am. Jur.
20 Am. Jur. 2d, Credit Cards §§ 14 et seq.

§ 97-19-27. Credit cards; receipt of things of value in violation of law.

Any person who receives money, goods, property, services, or anything else of value obtained in violation of Sections 97-19-5 through 97-19-29 and knowing or believing that it was so obtained violates said sections.

HISTORY: Codes, 1942, § 2148.7-11; Laws, 1968, ch. 345, § 11, eff 60 days after passage (approved August 8, 1968).

Cross References — White-collar crime investigation, see § 7-5-59.
Violation of this section as misdemeanor, and punishment therefor, see § 97-19-29.

RESEARCH REFERENCES

Am. Jur.
20 Am. Jur. 2d, Credit Cards § 36.

§ 97-19-29. Credit cards; penalty for violation of Sections 97-19-5 through 97-19-29.

Except as otherwise provided in Section 97-19-21, any person who violates any of the provisions of Sections 97-19-5 through 97-19-29 or commits any of the offenses described therein shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine not to exceed One Thousand Dollars ($1,000.00), or to imprisonment for a term not to exceed one (1) year, or both.

HISTORY: Codes, 1942, § 2148.7-12; Laws, 1968, ch. 345, § 12; Laws, 1992, ch. 384, § 2, eff from and after July 1, 1992.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

Enhancement of penalty for violation of provisions of §§ 97-19-5 through 97-19-29 under certain circumstances, see § 99-19-401.

§ 97-19-31. Credit cards; use of credit numbers or other credit device to obtain credit, goods, property or services.

(1) It shall be unlawful for any person knowingly to obtain or attempt to obtain credit, or to purchase or attempt to purchase any goods, property or service, by the use of any false, fictitious, counterfeit or expired telephone number, credit number or other credit device, or by the use of any telephone number, credit number or other credit device of another without the authority of the person to whom such number or device was issued, or by the use of any telephone number, credit number or other credit device in any case where such number or device has been revoked and notice of revocation has been given to the person to whom issued.

(2) It shall be unlawful for any person to use or to assist another to use a credit number or other credit device in connection with any fraudulent scheme, means or method with intent to defraud the issuer of such credit number or other credit device.

(3) It shall be unlawful for any person to obtain or attempt to obtain by the use of any false or fraudulent scheme, device, means or method, telephone or telegraph service or the transmission of a message, signal or other communication by telephone or telegraph, or over telephone or telegraph facilities.

(4) The word "notice" as used in subsection (1) of this section shall be construed to include either notice given in person or notice given in writing to the person to whom the number or device was issued. The sending of a notice in writing personally signed by the issuer or his duly authorized agent or employee by registered or certified mail in the United States mail, duly

stamped and addressed to such person at his last address known to the issuer, shall be prima facie evidence that such notice was duly received.

(5) Any person who violates any provision of subsections (1), (2) or (3) of this section is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than Fifty Dollars ($50.00) nor more than Five Hundred Dollars ($500.00) or imprisonment for not more than one (1) year, or by both such fine and imprisonment.

HISTORY: Codes, 1942, § 2148.5; Laws, 1960, ch. 248, §§ 1-5; Laws, 1968, ch. 345, § 15; Laws, 1986, ch. 326, eff from and after July 1, 1986.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

The enactment of Code 1942, § 2148.5 dealing specifically with fraudulent use of credit cards does not pre-empt the field and does not preclude prosecution under the general forgery statute of a defendant charged with using a stolen credit card to obtain goods and signing the credit card owner's name to the credit card slip or invoice. McCrory v. State, 210 So. 2d 877, 1968 Miss. LEXIS 1528 (Miss. 1968).

RESEARCH REFERENCES

Am. Jur.

32 Am. Jur. 2d, False Pretenses §§ 1 et seq.

CJS.

35 C.J.S., False Pretenses §§ 1 et seq.

§ 97-19-32. Credit cards; possession of scanning device or reencoder without permission of cardholder; scanning or reencoding with intent to defraud; penalties.

(1) For the purposes of this section, the following terms shall have the meanings ascribed to them unless the context clearly requires otherwise:

(a) "Cardholder" means any person:

(i) Named on the face of a credit card to whom or for whose benefit the credit card is issued by an issuer; or

(ii) In possession of a credit card with the consent of the person to whom the credit card was issued.

(b) "Credit card" means:

(i) Any instrument or device, whether known as a credit card, charge card, credit plate, courtesy card, identification card or any other name that is issued with or without fee by an issuer for the use of the cardholder in obtaining money, goods, services or anything else of value, either on credit or in consideration of an undertaking or guaranty by the issuer of the payment of a check drawn by the cardholder, on a promise to pay in part or in full therefor at a future time, whether or not all or any part of the indebtedness that is represented by the promise to make deferred payment is secured or unsecured.

(ii) A debit card, electronic benefit transfer card or other access instrument or device, other than a check that is signed by the holder or other authorized signatory on the deposit account, that draws funds from a deposit account in order to obtain money, goods, services or anything else of value.

(iii) A stored value card, smart card or other instrument or device that enables a person to obtain goods, services or anything else of value through the use of value stored on the card instrument or device.

(iv) The number that is assigned the card, instrument or device, even if the physical card, instrument or device is not used or presented.

(c) "Issuer" means any business organization, state agency or financial institution, or its duly authorized agent, that issues a credit card.

(d) "Merchant" means a person who is authorized under a written contract with a participating party to furnish money, goods, services or anything else of value on presentation of a credit card by a cardholder.

(e) "Reencoder" means an electronic device that places encoded information from the magnetic strip or stripe of a credit card onto the magnetic strip or stripe of a different credit card.

(f) "Scanning device" means a scanner, reader, skimmer or other electronic device that is used to access, read, scan, obtain, memorize or store, temporarily or permanently, information that is encoded on a magnetic strip or stripe of a credit card.

(2)(a) It is unlawful for a person to possess a scanning device or reencoder without the permission of the cardholder of the credit card from which the information is being scanned or reencoded with the intent to defraud the cardholder, the issuer or a merchant.

(b) A person who violates this section commits a felony punishable, upon conviction thereof, by imprisonment not to exceed five (5) years, a fine not to exceed Ten Thousand Dollars ($10,000.00), or both.

HISTORY: Laws, 2019, ch. 409, § 1, eff from and after July 1, 2019.

Editor's Notes — Laws of 2019, ch. 409, § 2, provides as follows:

"SECTION 2. This act shall be known as the Pay and Trade with Confidence and Electronic Device Tampering Act."

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

§ 97-19-33. False personation; personating another to marry, become bail or surety, confess judgment, acknowledge recorded instrument, or act in suit.

Every person who shall falsely represent or personate another, and in such assumed character shall marry another, or become bail or surety for any party in any proceeding, civil or criminal, before any court or officer authorized to take such bail or surety; or confess any judgment, or acknowledge the execution of any conveyance of real estate, or of any other instrument which by law may be recorded; or do any other act in the course of any suit, proceeding, or prosecution, whereby the person so represented or personated might be made liable in any event to the payment of any debt, damages, costs, or sum of money, or his rights or interests in any manner be affected if the same were legal shall, upon conviction, be punished by imprisonment in the penitentiary for a term not exceeding ten years. An indictment under this section for marrying shall not be found unless on the complaint of the injured party, before cohabitation, after knowledge of the fraud.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 4(48, 49); 1857, ch. 64, arts. 100, 101; 1871, §§ 2564, 2565; 1880, §§ 2806, 2807; 1892, § 1082; 1906, § 1162; Hemingway's 1917, § 889; 1930, § 915; 1942, § 2145.

Cross References — Limitations of prosecutions generally, see § 99-1-5.

Enhancement of penalty for violation of provisions of this section under certain circumstances, see § 99-19-401.

JUDICIAL DECISIONS

1. In general.

Where allegation that defendant represented to one F that he was agent of the state educational department in issuing teachers' licenses is not supported by any evidence, and F himself testified that no such representation was made, a judgment of conviction cannot be sustained. Carter v. State, 120 Miss. 294, 82 So. 146, 1919 Miss. LEXIS 86 (Miss. 1919).

RESEARCH REFERENCES

ALR.

Obtaining payment by debtor on valid indebtedness by false representation as criminal false pretenses. 20 A.L.R.2d 1266.

False statement as to existing encumbrance on chattel in obtaining loan or credit as criminal false pretense. 53 A.L.R.2d 1215.

Admissibility to establish fraudulent purpose or intent, in prosecution for obtaining or attempting to obtain money or property by false pretenses, of evidence of similar attempts on other occasions. 78 A.L.R.2d 1359.

Reasonable expectation of payment as affecting offense under "worthless check" statutes. 9 A.L.R.3d 719.

Admissibility, in prosecution for obtaining money or property by fraud or false pretenses, of evidence of subsequent payments made by accused to victim. 10 A.L.R.3d 572.

What constitutes mistake in the identity of one of the parties to warrant annulment of marriage. 50 A.L.R.3d 1295.

Am. Jur.

32 Am. Jur. 2d, False Personation §§ 1, 2.

CJS.

35 C.J.S., False Personation §§ 1 et seq.

Practice References.

Ronald L. Schoenberg, Criminal Law Deskbook (Matthew Bender).

§ 97-19-35. False personation; personating another to receive money or property.

Every person who shall falsely represent or personate another, and, in such assumed character, shall receive any money or valuable property of any description, intended to be delivered to the individual so personated, shall, upon conviction, be punished in the same manner and to the same extent as for feloniously stealing the money or property so received.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 4(50); 1857, ch. 64, art. 102; 1871, § 2566; 1880, § 2808; 1892, § 1083; 1906, § 1163; Hemingway's 1917, § 890; 1930, § 916; 1942, § 2146.

JUDICIAL DECISIONS

1. In general.

If possession of property is obtained by fraud and the owner intends to part with his title as well as his possession, the crime is that of obtaining property by false pretenses, provided the means by which it is acquired comply therewith, but if possession of property is fraudulently obtained with present intent on the part of the person obtaining it to convert the property to his own use, and the owner intends to part with possession merely and not with the title, the offense is larceny. Wilkinson v. State, 215 Miss. 327, 60 So. 2d 786, 1952 Miss. LEXIS 569 (Miss. 1952).

Where an accused urges employer to falsely represent to possessor of stray cattle that such cattle belong to the employer, thereby obtaining possession and selling such cattle and sharing the proceeds of the sale, he was properly prosecuted under the grand larceny statute. Wilkinson v. State, 215 Miss. 327, 60 So. 2d 786, 1952 Miss. LEXIS 569 (Miss. 1952).

Where allegation that defendant represented to one F that he was agent of the state educational department in issuing teachers' licenses is not supported by any evidence, and F himself testified that no such representation was made, a judgment of conviction cannot be sustained. Carter v. State, 120 Miss. 294, 82 So. 146, 1919 Miss. LEXIS 86 (Miss. 1919).

RESEARCH REFERENCES

Am. Jur.

32 Am. Jur. 2d, False Personation §§ 1, 2.

23 Am. Jur. Proof of Facts, Confidence Games and Swindles §§ 1 et seq.

CJS.

35 C.J.S., False Personation §§ 1 et seq.

§ 97-19-37. False personation; masquerading as deaf person.

No person in this state shall engage in the business of peddling finger alphabet cards or printed matter stating that the person is deaf or use finger alphabet cards or such printed matter or masquerade as a deaf person in any way as a means of inducement in the sale of merchandise. Any person who peddles finger alphabet cards or such printed matter or uses the same or masquerades as a deaf person in any way as a means of inducement in the sale of merchandise in this state shall be guilty of a misdemeanor and upon conviction thereof shall be fined not to exceed two hundred fifty dollars ($250.00) or imprisoned for a term not to exceed three (3) months, or in the discretion of the court, shall be subject to both such fine and imprisonment.

HISTORY: Codes, 1942, § 2314.5; Laws, 1962, ch. 313, eff from and after June 1, 1962.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am. Jur.

32 Am. Jur. 2d, False Personation §§ 1, 2.

CJS.

35 C.J.S., False Personation §§ 1 et seq.

§ 97-19-39. Obtaining signature or thing of value with intent to defraud.

(1) Every person who, with intent to cheat or defraud another, shall designedly, by color of any false token or writing, or by another false pretense, obtain the signature of any person to any written instrument, or obtain from any person any money, personal property, or valuable thing, with a value of less than Five Hundred Dollars ($500.00), upon conviction thereof, shall be guilty of a misdemeanor and punished by imprisonment in the county jail not exceeding six (6) months, and by fine not exceeding One Thousand Dollars ($1,000.00).

(2) Every person, who with intent to cheat or defraud another, shall designedly, by color of any false token or writing, or by another false pretense, obtain the signature of any person to any written instrument, or obtain from any person any money, personal property, or valuable thing, with a value of Five Hundred Dollars ($500.00) or more, upon conviction thereof shall be guilty of a felony and punished by imprisonment in the State Penitentiary not exceeding ten (10) years, and by a fine not exceeding Ten Thousand Dollars ($10,000.00).

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 4(53); 1857, ch. 64, art. 105; 1871, § 2569; 1880, § 2811; 1892, § 1086; 1906, § 1166; Hemingway's 1917, § 893; 1930, § 919; 1942, § 2149; Laws, 2003, ch. 499, § 5, eff from and after July 1, 2003.

Cross References — Obtaining board and lodging with intent to defraud, see §§ 75-73-9, 75-73-11.

Fraudulent use of credit cards, see § 97-19-5 et seq.

Extension of penalty in case of negotiable instruments, see § 97-19-41.

Enhancement of penalty for violation of provisions of this section under certain circumstances, see § 99-19-401.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Larceny distinguished.
3. Indictment, generally.
4. —Name of party defrauded required.
5. —Where false pretense is a writing.
6. —Sufficiency.
7. Commission of crime.
8. Burden and degree of proof.
9. Evidence sufficient.
10. Jury instructions.
11. Double jeopardy.

1. In general.

Defendant's motion to quash an indictment charging him with receiving money under false pretenses in violation of Miss. Code Ann. § 97-19-39 was properly denied because the term "person" applied to artificial as well as natural persons and therefore encompassed limited liability companies. Cater v. State, 5 So. 3d 391, 2009 Miss. LEXIS 126 (Miss. 2009).

In the context of a fraudulent future promise to pay, a false pretense charge under Miss. Code Ann. § 97-19-39 does not encompass such facts. A wire fraud charge, under Miss. Code Ann. § 97-19-83, does. McGee v. State, 853 So. 2d 125, 2003 Miss. App. LEXIS 159 (Miss. Ct. App.), cert. denied, 852 So. 2d 577, 2003 Miss. App. LEXIS 834 (Miss. Ct. App. 2003).

Convictions for substantive Racketeer Influenced and Corrupt Organizations Act (RICO) violations were supported by evidence showing defendants' involvement in enterprise, that enterprise operated cheating scheme at Mississippi casino, and that defendants facilitated cheating, one by placing marked cards on table for play and other by organizing cheating crews. United States v. Vaccaro, 115 F.3d 1211, 1997 U.S. App. LEXIS 13724 (5th Cir. Miss. 1997), cert. denied, 522 U.S. 1047, 118 S. Ct. 689, 139 L. Ed. 2d 635, 1998 U.S. LEXIS 57 (U.S. 1998).

Defendant's conviction for conspiracy to violate Racketeer Influenced and Corrupt Organizations Act (RICO) arising from alleged scheme to defraud Mississippi casino did not violate ex post facto clause to extent that underlying offenses occurred prior to Mississippi's enactment of statutes that prohibited cheating at gambling games and marking or altering of gaming equipment or devices, given absence of showing that cheating at gambling was legal in Mississippi prior to statutes' enactment. United States v. Vaccaro, 115 F.3d 1211, 1997 U.S. App. LEXIS 13724 (5th Cir. Miss. 1997), cert. denied, 522 U.S. 1047, 118 S. Ct. 689, 139 L. Ed. 2d 635, 1998 U.S. LEXIS 57 (U.S. 1998).

Absent a showing of intent to defraud, the elements of the crime of false pretenses are not fully satisfied; thus, the evidence was insufficient to support a conviction on charges of false pretenses pursuant to this section, stemming from the defendant's failure to properly repair a leaking roof, where the State presented evidence only of shoddy workmanship but failed to present any evidence that the defendant acted with an intent to defraud. Allred v. State, 605 So. 2d 758, 1992 Miss. LEXIS 441 (Miss. 1992).

In order to sustain a conviction under this section, there must be a showing that the pretenses were false, that the defendant knew them to be false, and that the pretenses were the moving cause by which the money was obtained; accordingly, where the State failed to present any evidence that a company was injured or suffered any detriment as a result of the issuance of seven rebate checks, the evidence was insufficient to sustain a conviction of receiving money by false pretenses (among conflicting authorities on other grounds noted in Tanner v. State (1989, Miss.) 556 So. 2d 681). Gordon v. State, 458 So. 2d 739, 1984 Miss. LEXIS 1976 (Miss. 1984).

In a prosecution for false pretenses, the trial court properly refused to quash the indictment, despite defendant's contention that the indictment charged only conspiracy, a crime not excepted from the two year statute of limitations, and that the prosecution was thus barred; conspiracy is a complete offense in itself and does not merge with the underlying crime, and the fact that a conspiracy is committed along with the crime does not change the nature of the offense nor lessen exposure to punishment. Furthermore, the prosecution was not time barred even though defendant was charged with being an accessory only, which is a separate crime not excepted from the statute, since an accessory before the fact to an excepted felony is treated as a principal. Harrigill v. State, 381 So. 2d 619, 1980 Miss. LEXIS 1887 (Miss.), cert. denied, 446 U.S. 939, 100 S. Ct. 2159, 64 L. Ed. 2d 792, 1980 U.S. LEXIS 1596 (U.S. 1980).

Where an officer knew that the defendant had committed a misdemeanor and had also run up a large bill at a motel under a fictitious name, it was more likely that the defendant had committed the felony of false pretenses; Thus there was probable cause to arrest, based upon the misdemeanor charge. United States v. Atkinson, 450 F.2d 835, 1971 U.S. App. LEXIS 7680 (5th Cir. Miss. 1971), cert. denied, 406 U.S. 923, 92 S. Ct. 1790, 32 L. Ed. 2d 123, 1972 U.S. LEXIS 2689 (U.S. 1972).

A false pretense may be either express or by implication and it may consist of any act, word, symbol, doctrine, or in some instances concealment, calculated and intended to deceive. Neece v. State, 210 So. 2d 657, 1968 Miss. LEXIS 1508 (Miss. 1968).

Acts or conduct, without words, may constitute a false pretense. Lee v. State, 244 Miss. 813, 146 So. 2d 736, 1962 Miss. LEXIS 510 (Miss. 1962).

To show false pretense, a felonious intent to cheat and defraud must be proved. Lee v. State, 244 Miss. 813, 146 So. 2d 736, 1962 Miss. LEXIS 510 (Miss. 1962).

Where defendant was convicted of obtaining buyer's money under false pretenses by selling property on which defendant had previously given a lien without informing the buyer of the lien, in violation of Code 1942, § 2151 which states that the punishment shall be the same as for obtaining goods under false pretenses, the defendant would be sentenced under this section [Code 1942, § 2149]. Jones v. State, 226 Miss. 535, 84 So. 2d 799, 1956 Miss. LEXIS 431 (Miss. 1956).

In a prosecution for false pretenses it is necessary to charge that the pretenses were false, that the defendant knew them to be false, that he obtained from another certain money or other valuable things, and that the pretenses were the moving cause by which the money or things were obtained. State v. Cohran, 226 Miss. 212, 83 So. 2d 827, 1955 Miss. LEXIS 626 (Miss. 1955).

A false pretense may consist in any act, word, symbol, or token calculated and intended to deceive and it may be made either expressly or by implication. Fuller v. State, 221 Miss. 247, 72 So. 2d 454, 1954 Miss. LEXIS 534 (Miss. 1954).

Where defendant negotiated to named person, without any representation as to his identity, a check which was genuine and duly indorsed in blank by the payee named therein, defendant could not be convicted of obtaining money under false pretenses, even though the defendant was not rightfully in possession of the check. Bruce v. State, 217 Miss. 368, 64 So. 2d 332, 1953 Miss. LEXIS 440 (Miss. 1953).

Word "obtain" within statute providing penalty for obtaining money under false pretenses means acquisition of title to property or ownership thereof, and does not include mere acquisition of possession. Courtney v. State, 174 Miss. 147, 164 So. 227, 1935 Miss. LEXIS 70 (Miss. 1935).

Intent to return money, or actual return, no defense. Odom v. State, 130 Miss. 643, 94 So. 233, 1922 Miss. LEXIS 219 (Miss. 1922).

It is not an offense to obtain money by false pretenses, unaccompanied by an intent to defraud. Pittman v. State, 101 Miss. 553, 58 So. 532, 1911 Miss. LEXIS 170 (Miss. 1911), overruled, Odom v. State, 130 Miss. 643, 94 So. 233, 1922 Miss. LEXIS 219 (Miss. 1922), overruled, Sparks v. Robins, 95 So. 255 (Miss. 1923).

It is not necessary that the false pretenses should have been the sole inducement for parting with the property. It is sufficient if the pretenses constituted a material part of the inducement, even though other considerations entered into it, if without the false pretenses, the goods would not have been delivered. Smith v. State, 55 Miss. 513, 1878 Miss. LEXIS 1 (Miss. 1878).

The pretenses need not be such as would deceive a man of ordinary prudence. The statute was passed for the protection of the weak and unsuspecting as well as the wary and cautious. Smith v. State, 55 Miss. 513, 1878 Miss. LEXIS 1 (Miss. 1878).

The state must show not only that the pretenses were false, but also that they were made with the design of obtaining the money, and that the money was paid in consequence of the pretenses. Bowler v. State, 41 Miss. 570, 1867 Miss. LEXIS 40 (Miss. 1867).

2. Larceny distinguished.

When personal property is fraudulently obtained under such circumstances that owner intends that no title shall pass, offense is grand larceny, but when he intends that ownership or legal title shall pass offense is that of obtaining money under false pretenses. Garvin v. State, 207

Miss. 751, 43 So. 2d 209, 1949 Miss. LEXIS 386 (Miss. 1949).

Obtaining and keeping of money under practice known as "pigeon-dropping," victim delivering money of his own to pretended finder of large sum to establish right to participate in division of money found, constitutes crime of grand larceny instead of obtaining money under false pretenses. Garvin v. State, 207 Miss. 751, 43 So. 2d 209, 1949 Miss. LEXIS 386 (Miss. 1949).

3. Indictment, generally.

Amendment to the indictment charging defendant with false pretense in violation of Miss. Code Ann. § 97-19-39 did not prejudice defendant, and the circuit court did not err in allowing the amendment under Miss. Code Ann. § 99-19-5(1) to change the charge to attempt to commit false pretense; defendant was on notice that he could be convicted of attempt to commit any of the offenses with which he was charged in the indictment. Patton v. State, 109 So. 3d 66, 2012 Miss. LEXIS 612 (Miss. 2012), cert. denied, 571 U.S. 1075, 134 S. Ct. 687, 187 L. Ed. 2d 556, 2013 U.S. LEXIS 8618 (U.S. 2013).

Where defendant defrauded furniture sellers by telephone, wire communications, or mail, defendant's second indictment for wire fraud did not conflict with double jeopardy rules, because wire fraud charge was a distinct offense, and required proof of different elements than the initial charge of false pretenses, which had been dismissed. McGee v. State, 853 So. 2d 125, 2003 Miss. App. LEXIS 159 (Miss. Ct. App.), cert. denied, 852 So. 2d 577, 2003 Miss. App. LEXIS 834 (Miss. Ct. App. 2003).

Indictment charging three individuals with obtaining loan in name of one of them and dividing loan among themselves with intent to cheat lender by not repaying loan failed to adequately charge crime of false pretense, having alleged no factual representation regarding present for past fact. State v. Allen, 505 So. 2d 1024, 1987 Miss. LEXIS 2490 (Miss. 1987).

Under an indictment charging that the defendants knowing a conditional sales contract was a false contract and not representing evidence of a valid purchase and sale transaction between the defendant and a third party, and by virtue of this said false representation and false pretence, the defendant did with intent to cheat and defraud a bank, sell the conditional sales contract to the bank, the prosecution was limited to establishing as false in fact the alleged false representation set out in the indictment which charged that the contract was false without specifying any respect in which it was false except to say that it had not represented a bona fide purchase and sales agreement, and the prosecution could not seek to develop that the equipment covered by the conditional sales contract did not exist. Westmoreland v. State, 286 So. 2d 807, 1973 Miss. LEXIS 1317 (Miss. 1973).

Where the defendant obtained money and property from another in exchange for an automobile which he falsely represented he owned, the name of the owner of the vehicle was immaterial, and the indictment returned against him was not defective for failing to allege the owner's name. Young v. State, 209 So. 2d 189, 1968 Miss. LEXIS 1443 (Miss. 1968).

Where an indictment charged that the defendants obtained paint by false pretenses and there was evidence that the seller delivered the paint to the buyers charging it to an account of a certain person in reliance on representations made by buyers that they were working for such persons, the evidence and indictments were not in variance. Fuller v. State, 221 Miss. 247, 72 So. 2d 454, 1954 Miss. LEXIS 534 (Miss. 1954).

An indictment for false pretenses must allege that the pretenses were false, accused knew them to be false, and obtained something of value because of making such false pretenses. State v. Freeman, 103 Miss. 764, 60 So. 774, 1912 Miss. LEXIS 229 (Miss. 1912).

Indictment secured by an attorney for person defrauded through testimony of his relatives is properly quashed. State v. Barnett, 98 Miss. 812, 54 So. 313, 1910 Miss. LEXIS 127 (Miss. 1910).

Indictment alleging that "by means and color of which false pretense," defendant obtained the property in question of prosecutor, was not demurrable. State v.

Dodenhoff, 88 Miss. 277, 40 So. 641, 1906 Miss. LEXIS 124 (Miss. 1906).

4. —Name of party defrauded required.

In prosecution for obtaining property by false pretenses, the indictment must allege the name of party defrauded and proof must sustain the allegation. Bruce v. State, 217 Miss. 368, 64 So. 2d 332, 1953 Miss. LEXIS 440 (Miss. 1953).

In an indictment for false pretenses the name of party defrauded must be given. Pippin v. State, 126 Miss. 146, 88 So. 502, 1921 Miss. LEXIS 15 (Miss. 1921).

Christian and surname of individuals composing partnership alleged to be defrauded must be given or proper excuse for the omission. State v. Tatum, 96 Miss. 430, 50 So. 490, 1910 Miss. LEXIS 144 (Miss. 1910).

5. —Where false pretense is a writing.

Facts extrinsic to the writing relied upon as having been a false token in writing must be stated in the indictment. Westmoreland v. State, 286 So. 2d 807, 1973 Miss. LEXIS 1317 (Miss. 1973).

When the false pretense charged in an indictment is in writing, the writing need not be set out in specific words, but it is sufficient to set out the purport thereof, unless some question turns on the form or construction of the instrument or some other legal description is given in the indictments, the accuracy of which may be material for the court to determine. Prisock v. State, 244 Miss. 408, 141 So. 2d 711, 1962 Miss. LEXIS 463 (Miss. 1962).

An indictment charging that by means and color of false writings, in stated words and figures, the defendant had obtained a sum of money from a partnership, was defective because of the absence of extrinsic facts in explanation of the pretense and wherein it consisted, and it was also defective because it failed to charge that the defendants knew that the writings were false. State v. Cohran, 226 Miss. 212, 83 So. 2d 827, 1955 Miss. LEXIS 626 (Miss. 1955).

Writing constituting false pretense need not be set out in indictment in haec verba, unless some question turns on form of construction of instrument, or accuracy of some legal description of it is material. State v. Tatum, 96 Miss. 430, 50 So. 490, 1910 Miss. LEXIS 144 (Miss. 1910).

6. —Sufficiency.

Motion for post-conviction relief was denied in a case where defendant pled guilty to uttering a forgery because a claim that the charge should have been for false pretenses instead was procedurally barred under Miss. Code Ann. § 99-39-21(1) since the issue was not raised in the plea; despite the bar, the issue was meritless because defendant admitted in the plea colloquy that she knowingly created a fictitious name for use on a bank account and presented a check drawn on that account for payment at a retail store. Tate v. State, 961 So. 2d 763, 2007 Miss. App. LEXIS 463 (Miss. Ct. App. 2007).

Indictment failed to charge facts which constitute crime of false pretenses where finance company official had been paid to secure loan on basis of false information; whatever bad intent defendants evidenced, that intent did not include plan to deprive finance company of money or property; indictment did not suggest that loan was not legally binding obligation, nor did it refute clear inference that finance company obtained account receivable asset through transaction; crime of false pretenses occurs when one makes false representation of past or existing fact with intent to deceive and with result that accused obtains something of value from party deceived, and in order for one to be guilty of obtaining money under false pretenses, he must obtain property of another by false pretenses and to detriment or injury of person from who he obtained that property. State v. Rivenbark, 509 So. 2d 1047, 1987 Miss. LEXIS 2611 (Miss. 1987).

An indictment sufficiently charged facts which constituted the crime of false pretense under Code 1942, § 2149, and was not defective because it also recited the words of Code 1942, § 2150 dealing with the use of a promissory note or other negotiable evidence of debt in committing the offense, but it was error to impose a sentence under the latter section which carries a harsher penalty, where the facts charged in the indictment and established in the proof did not show commission of the offense under circumstances bringing it within that statute. Westmoreland v. State, 246 So. 2d 487, 1971 Miss. LEXIS 1397 (Miss. 1971), cert. denied, 404 U.S. 1038, 92 S. Ct. 702, 30 L. Ed. 2d 729, 1972 U.S. LEXIS 3927 (U.S. 1972).

The requirements of specificity with respect to an allegation of ownership in an indictment charging false pretense, demand neither a deraignment of title nor a statement in direct terms showing perfect title, where ownership of the money or property obtained reasonably appears from the whole indictment, and there is nothing in the indictment to support or suggest any other reasonable conclusion. Westmoreland v. State, 246 So. 2d 487, 1971 Miss. LEXIS 1397 (Miss. 1971), cert. denied, 404 U.S. 1038, 92 S. Ct. 702, 30 L. Ed. 2d 729, 1972 U.S. LEXIS 3927 (U.S. 1972).

An indictment which charged that the pretenses employed by the defendants were false and known by the defendants to be false, that money was thereby obtained from the state, and that the pretenses were the means by which the money was obtained, sufficiently stated the offense of obtaining money of state in violation of the false pretense statute, and adequately informed the defendants of the charges therein laid against them. Mississippi State Highway Com. v. Herrin, 241 So. 2d 346, 1970 Miss. LEXIS 1332 (Miss. 1970).

An indictment which charged that the defendant, intending to defraud, did pretend that he was entitled to receive a certain sum of money evidenced by a customer's draft and did falsely pretend that said draft would be honored and by means of such false pretense did obtain from a named bank a sum of money was sufficient; and it was unnecessary that the indictment charge that the pretenses were the moving cause whereby money was obtained. Neece v. State, 210 So. 2d 657, 1968 Miss. LEXIS 1508 (Miss. 1968).

In an indictment charging the accused with the crime of attempting to commit false pretenses or cheats by organizing a group of people who attempted to defraud insurance companies by staging a fake or false wreck with automobiles, a statement that certain named individuals involved in the scheme bought insurance contracts to indemnify themselves from loss occasioned by personal injuries received in automobile accidents, and that another person, also involved, had bought an insurance contract of indemnity for loss occasioned by acts of negligence committed by him in the operation of the automobiles, sufficiently described the insurance policies by designation and type and thereby indicated their purport within the meaning of Code 1942, § 2453. Prisock v. State, 244 Miss. 408, 141 So. 2d 711, 1962 Miss. LEXIS 463 (Miss. 1962).

Language of indictment was sufficient to charge that prosecuting witness was moved to and did part with its goods by false pretenses. Odom v. State, 130 Miss. 643, 94 So. 233, 1922 Miss. LEXIS 219 (Miss. 1922).

Indictment alleging that accused intending to cheat and defraud R of $10.00 did wilfully, etc., pretend to R that he was duly authorized to represent a loan company and by means of said fraudulent representation procured the money from R, held bad on demurrer for failure to allege the moving cause by which the money was obtained. State v. Freeman, 103 Miss. 764, 60 So. 774, 1912 Miss. LEXIS 229 (Miss. 1912).

Indictment charging accused fraudulently pretended to insurer that he was the beneficiary in a life policy by means of which he obtained from insurer a specified sum, is fatally bad for failing to charge the ownership of the money paid, and to allege that the beneficiary in the policy had not assigned it to accused. State v. Hubanks, 99 Miss. 775, 56 So. 163, 1911 Miss. LEXIS 249 (Miss. 1911).

Allegations that defendant obtained from prosecutor $600 by certain false contentions sufficiently alleged value of property. State v. Tatum, 96 Miss. 430, 50 So. 490, 1910 Miss. LEXIS 144 (Miss. 1910).

7. Commission of crime.

Evidence was sufficient to sustain a conviction where: (1) several windows were taken from an apartment complex under construction; (2) later that day, the defendant's wife returned five windows to the retail store from which they were purchased, in exchange for $437.58; (3) in presenting the windows to the store, the defendant and his wife claimed that they were the rightful owners of the property, that they purchased the property from the store and wanted to return it for a refund; and (4) the defendant admitted his involvement in the transaction, and he stated that his wife actually returned the windows to the store because he did not have any identification. Anderson v. State, 738 So. 2d 253, 1998 Miss. App. LEXIS 1045 (Miss. Ct. App. 1998).

In a prosecution for false pretense arising out of defendant's securing of a second deed of trust on property owned by a third party which later became the subject of a loan from a savings and loan association, the evidence failed to establish the offense outlined in this section where defendant, although he was chairman of the board of the association's parent corporation, took no part in the loan process, never recorded the deed of trust, and received no benefits from the transactions in question, while the association gained a profit from a joint venture suggested by defendant and entered into by the association with the third party for the purpose of selling lots and sharing the proceeds. Carter v. State, 386 So. 2d 1102, 1980 Miss. LEXIS 2062 (Miss. 1980).

Conviction under this section was reversed where evidence was clear that sheriff's deputy bought oil from defendants voluntarily and without relying upon their representations that it would cure his arthritis or "undress" his truck. Sturgis v. Jordan, 326 So. 2d 469 (Miss. 1976).

As bearing upon felonious intent in obtaining a deed, it is permissible to show that the grantee procured the forgery of the notary's certificate of acknowledgment. Lee v. State, 244 Miss. 813, 146 So. 2d 736, 1962 Miss. LEXIS 510 (Miss. 1962).

Evidence, including the testimony of eight accomplices who testified for the state, sustained the conviction of an attorney for an attempt to commit the crime of false pretenses or cheats by organizing a group of people who attempted to defraud insurance companies by staging a fake or false wreck with automobiles, after having obtained hospitalization insurance on the participants and liability insurance on the offending vehicle. Prisock v. State, 244 Miss. 408, 141 So. 2d 711, 1962 Miss. LEXIS 463 (Miss. 1962).

Where the defendants falsely represented to seller of paint that they were working for a certain person and wanted paint purchased charged to his account, the defendants by implication falsely represented that they were authorized to have the paint so charged and where after receiving the paint they deposited as a security for a loan thereby establishing an intent to defraud, this was sufficient to support conviction of both buyers for obtaining property by false pretenses. Fuller v. State, 221 Miss. 247, 72 So. 2d 454, 1954 Miss. LEXIS 534 (Miss. 1954).

Though there is in force a bad check statute, and prosecutions may be lodged thereunder, the giving of a bad check may under certain circumstances constitute the offense of obtaining property under false pretenses. Blakeney v. State, 216 Miss. 211, 62 So. 2d 313, 1953 Miss. LEXIS 626 (Miss. 1953).

Where purchasers of cattle at auction sales were required before obtaining the possession of cattle to pay for them in cash and where the accused after purchasing cattle issued his check and subsequently the cattle were delivered and then the check was dishonored because of insufficient funds, the accused could be prosecuted for obtaining property under false pretenses. Blakeney v. State, 216 Miss. 211, 62 So. 2d 313, 1953 Miss. LEXIS 626 (Miss. 1953).

In order to establish the crime of false pretenses, the pretense must be a representation as to an existing fact or past event, and not as to something to take place in the future; and it must be a representation as to a material fact. Button v. State, 207 Miss. 582, 42 So. 2d 773, 1949 Miss. LEXIS 370 (Miss. 1949).

The falsity of the representation is a part of the corpus delicti of obtaining property under false pretenses; and a conviction, based alone upon a confession as to falsity of the pretense, is insufficient without other proof of the corpus delicti. Button v. State, 207 Miss. 582, 42 So. 2d 773, 1949 Miss. LEXIS 370 (Miss. 1949).

Evidence that defendant obtained money from another by promise to use it for a specific purpose and then to return it, together with portion of money found, held insufficient to warrant conviction for obtaining money under false pretenses, but evidence disclosed crime of larceny, provided money was obtained with intent to steal. Courtney v. State, 174 Miss. 147, 164 So. 227, 1935 Miss. LEXIS 70 (Miss. 1935).

Where testimony of prosecuting witness failed to show any false pretenses, it was insufficient to sustain allegations of indictment. Dunbar v. State, 130 Miss. 317, 94 So. 224, 1922 Miss. LEXIS 214 (Miss. 1922).

It is not sufficient to sustain conviction for obtaining money under false pretenses to prove merely that the representation was false in fact, but proof must show that statement was known to be false by the person making it, or he must state the fact in such way as to carry assurance to the party that he is dealing with that the representation is true of his knowledge, and the representation must have been the efficient cause of the money being paid to such party. King v. State, 124 Miss. 477, 86 So. 874, 1920 Miss. LEXIS 531 (Miss. 1920).

This section [Code 1942, § 2149] applies where defendant represented that he owned a cow and would give it to a physician for medical services, and the services were rendered, and defendant owned no cow, since a physician's services are a "valuable thing" within the statute. State v. Ball, 114 Miss. 505, 75 So. 373, 1917 Miss. LEXIS 56 (Miss. 1917).

Inducing another to sign a deed by false and fraudulent representatives does not constitute forgery at common law, nor under Code 1892, § 1093, but does constitute a crime under Code 1892, § 1086, defining false pretenses and cheats. Johnson v. State, 87 Miss. 502, 39 So. 692, 1905 Miss. LEXIS 131 (Miss. 1905).

It is necessary that the money obtained, or some part thereof, should be obtained by the prisoner or for him. If obtained wholly by a third person there can be no conviction. Bracey v. State, 64 Miss. 26, 8 So. 165, 1886 Miss. LEXIS 8 (Miss. 1886).

8. Burden and degree of proof.

Defendant's conviction for false pretenses was supported by sufficient evidence as the evidence showed that, while defendant claimed money from a widow was for repairing siding, the widow testified it was for cleaning gutters that were not cleaned and was ten times the agreed amount. It was up to the jury to decide if her testimony was improbable or contradictory. Cooper v. State, 68 So. 3d 741, 2011 Miss. App. LEXIS 241 (Miss. Ct. App.), cert. denied, 69 So. 3d 9, 2011 Miss. LEXIS 404 (Miss. 2011).

Proof of false pretenses must be beyond a reasonable doubt. Lee v. State, 244 Miss. 813, 146 So. 2d 736, 1962 Miss. LEXIS 510 (Miss. 1962).

The burden is on the state to prove falsity of representation as to an existing fact beyond every reasonable doubt. Button v. State, 207 Miss. 582, 42 So. 2d 773, 1949 Miss. LEXIS 370 (Miss. 1949).

Under an indictment for obtaining goods under false pretenses, it devolves on the state to prove the falsity of the pretenses, unless the facts lie peculiarly within the knowledge of the defendant. When the pretense is that the accused "is a minister of the Baptist church in good standing," the burden of proving its falsity is on the state. Bowler v. State, 41 Miss. 570, 1867 Miss. LEXIS 40 (Miss. 1867).

9. Evidence sufficient.

Evidence was sufficient to convict defendant of false pretenses because a timber company paid for timber to which it never acquired title or interest, and thus, the jury was entitled to draw a reasonable deduction that the company suffered an injury as a result of defendant's fraudulent conduct; the alleged detriment was that the company did not lawfully obtain title to the timber due to forged deeds, and the company was indebted to the victim for the fraudulently obtained timber. Terrell v. State, 237 So. 3d 717, 2018 Miss. LEXIS 1 (Miss. 2018).

10. Jury instructions.

Trial court did not err in refusing to give defendant's proposed jury instruction because it erroneously would have required the State to prove a timber company suffered a "monetary loss" to find defendant guilty of false pretenses; the instruction the trial court gave the jury correctly states the law, was tailored to the facts of the case, and included all essential elements of false pretenses. Terrell v. State, 237 So. 3d 717, 2018 Miss. LEXIS 1 (Miss. 2018).

11. Double jeopardy.

Defendant's sentences for conspiracy to commit false pretenses and conspiracy to commit timber theft punished him twice for the same illegal agreement, violating the constitutional prohibition against double jeopardy, because here were not two separate conspiracies but rather one conspiracy with two illegal objects, to steal the victim's timber and to obtain money from an unwitting timber company through false pretenses. Terrell v. State, 237 So. 3d 717, 2018 Miss. LEXIS 1 (Miss. 2018).

OPINIONS OF THE ATTORNEY GENERAL

This section and 97-19-41 are a possible charge against an individual who writes a check with the intent to stop payment prior to the check being honored, even if the account has sufficient funds to cover the check. See also Section 97-19-55. Smith, November 8, 1996, A.G. Op. #96-0784.

RESEARCH REFERENCES

ALR.

Obtaining payment by debtor on valid indebtedness by false representation as criminal false pretenses. 20 A.L.R.2d 1266.

Admissibility, in prosecution for obtaining money or property by fraud or false pretenses, of evidence of subsequent payments made by accused to victim. 10 A.L.R.3d 572.

Procuring signature by fraud as forgery. 11 A.L.R.3d 1074.

Changing of price tags by patron in self-service store as criminal offense. 60 A.L.R.3d 1293.

Fraud in connection with franchise or distributorship relationship. 64 A.L.R.3d 6.

Criminal offenses under statutes and ordinances regulating charitable solicitations. 76 A.L.R.3d 924.

Embezzlement, larceny, false pretenses or allied criminal fraud by a partner. 82 A.L.R.3d 822.

Modern status of rule that crime of false pretenses cannot be predicated upon present intention not to comply with promise or statement as to future act. 19 A.L.R.4th 959.

Am. Jur.

32 Am. Jur. 2d, False Pretenses §§ 39-45.

23 Am. Jur. Proof of Facts, Confidence Games and Swindles §§ 1 et seq.

CJS.

35 C.J.S., False Pretenses §§ 27, 28.

Practice References.

Ronald L. Schoenberg, Criminal Law Deskbook (Matthew Bender).

§ 97-19-41. Obtaining signature or thing of value with intent to defraud; penalty for using false negotiable instrument.

If the false token by which any money, personal property, or valuable thing shall be obtained, as specified in Section 97-19-39, be a promissory note, or other negotiable evidence of debt, purporting to have been issued by or under the authority of any person, banking company, or moneyed corporation not in existence, the person convicted of such cheat shall be punished by imprisonment in the penitentiary not exceeding seven years.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 4(54); 1857, ch. 64, art. 106; 1871, § 2570; 1880, § 2812; 1892, § 1087; 1906, § 1167; Hemingway's 1917, § 894; 1930, § 920; 1942, § 2150.

Cross References. — Enhancement of penalty for violation of provisions of this section under certain circumstances, see § 99-19-401.

JUDICIAL DECISIONS

1. In general.

An indictment sufficiently charged facts which constituted the crime of false pretense under Code 1942, § 2149, and was not defective because it also recited the words of Code 1942, § 2150 dealing with the use of a promissory note or other negotiable evidence of debt in committing the offense, but it was error to impose a sentence under the latter section which carries a harsher penalty, where the facts charged in the indictment and established in the proof did not show commission of the offense under circumstances bringing it within that statute. Westmoreland v. State, 246 So. 2d 487, 1971 Miss. LEXIS 1397 (Miss. 1971), cert. denied, 404 U.S. 1038, 92 S. Ct. 702, 30 L. Ed. 2d 729, 1972 U.S. LEXIS 3927 (U.S. 1972).

OPINIONS OF THE ATTORNEY GENERAL

Sections 97-19-39 and this section are a possible charge against an individual who writes a check with the intent to stop payment prior to the check being honored, even if the account has sufficient funds to cover the check. See also Section 97-19-55. Smith, November 8, 1996, A.G. Op. #96-0784.

RESEARCH REFERENCES

ALR.

Procuring signature by fraud as forgery. 11 A.L.R.3d 1074.

Am. Jur.

32 Am. Jur. 2d, False Pretenses §§ 1 et seq.

CJS.

35 C.J.S., False Pretenses § 92.

§ 97-19-43. Patriotic and fraternal organizations; unauthorized use of membership buttons, insignia, etc.

Any person not being a member of the Confederate Veterans, of the Daughters of the Confederacy, of the Sons of Confederate Veterans, of the Sons of the American Revolution, of the Daughters of the American Revolution, of the Colonial Dames, of the Grand Army of the Republic, of the Sons of Veterans, of the Woman's Relief Corps, of the Military Order of the Foreign Wars of the United States, or the American Legion, of the American Legion Auxiliary, Veterans of Foreign Wars, Veterans of Foreign Wars Auxiliary, Disabled American Veterans, Disabled American Veterans Auxiliary, American Veterans of World War II, American Veterans of World War II Auxiliary, of the Masons, of the Woodmen of the World, of the Knights of Pythias, or of any other patriotic or fraternal organization, who shall wilfully wear the insignia, distinctive ribbons or membership rosette or button or any imitation thereof, shall be punished by a fine of not more than twenty dollars or by imprisonment for not more than thirty days, or by both such fine and imprisonment. Provided however that these emblems may be worn, by consent, by those nearest of kin.

HISTORY: Codes, 1930, § 899; 1942, § 2125; Laws, 1922, ch. 272; Laws, 1948, ch. 507.

§ 97-19-45. Producing child with intent to intercept inheritance.

Every person who shall fraudulently produce an infant, falsely pretending it to have been born of parents whose child would have been entitled to a share of any personal estate, or to inherit any real estate, with the intent of intercepting the inheritance of any such real estate, or the distribution of any such personal property from any person lawfully entitled thereto, shall, upon conviction, be punished by imprisonment in the penitentiary not exceeding ten years.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 4(51); 1857, ch. 64, art. 103; 1871, § 2567; 1880, § 2809; 1892, § 1084; 1906, § 1164; Hemingway's 1917, § 891; 1930, § 917; 1942, § 2147.

Cross References — Descent of land, see § 91-1-3.
Disqualification of slayer to inherit from victim, see § 91-1-25.

RESEARCH REFERENCES

Am. Jur.
32 Am. Jur. 2d, False Pretenses §§ 1 et seq.

CJS.
35 C.J.S., False Pretenses §§ 1 et seq.

§ 97-19-47. Receiving deposits when bank is insolvent.

The officers or employees of any bank or branch bank who shall receive any deposit knowing or having reason to believe that such bank or branch bank is insolvent, and the owners of any bank or branch bank who shall receive any deposit knowing that such bank or branch bank is insolvent, shall be deemed guilty of a felony and punished, upon conviction therefor, by a fine not exceeding one thousand dollars ($1,000.00) or imprisonment in the state penitentiary for not more than two years, nor less than one year, or by both such fine and imprisonment at the discretion of the court, for each offense.

HISTORY: Codes, 1880, § 2814; 1892, § 1089; 1906, § 1169; Hemingway's 1917, § 896; 1930, § 922; 1942, §§ 2152, 5239; Laws, 1914, ch. 124, § 52; Laws, 1934, ch. 146.

Cross References — Receipt of deposits in insolvent bank as ground for attachment, see § 11-33-9.
Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Indictment.
3. Evidence.
4. Miscellaneous.

1. In general.

Gross negligence of bank director in discharging his duties as such alone does not warrant conviction. Buckley v. State, 121 Miss. 66, 83 So. 403, 1919 Miss. LEXIS 148 (Miss. 1919).

Code 1906, § 1169, as amended, repealed by State Banking Law. State v. McLean, 109 Miss. 526, 68 So. 772, 1915 Miss. LEXIS 190 (Miss. 1915).

Cashier did not violate statute [Code 1942, § 2152] by keeping deposits received in separate fund so that identical money could be returned to depositor. Sively v. State, 107 Miss. 118, 65 So. 118, 1914 Miss. LEXIS 62 (Miss. 1914).

This section [Code 1942, § 2152] is designed to protect general public in making deposits. State v. Rawles, 103 Miss. 806, 60 So. 782, 1912 Miss. LEXIS 233 (Miss. 1912).

There may be a conviction of a director, the bank having been kept open by the directors with knowledge of its status, though he did not manually receive deposit. State v. Mitchell, 96 Miss. 259, 51 So. 4, 1909 Miss. LEXIS 54 (Miss. 1909).

Where statute makes existence of certain facts a crime, such facts must exist to constitute crime. Stewart v. State, 95 Miss. 627, 49 So. 615, 1909 Miss. LEXIS 283 (Miss. 1909).

Accused must have actually known or have had good reason to believe bank was insolvent. Stewart v. State, 95 Miss. 627, 49 So. 615, 1909 Miss. LEXIS 283 (Miss. 1909).

National bank officers are punishable under this section [Code 1942, § 2152] since congress has not made the precise conduct denounced by this section [Code 1942, § 2152] a crime. State v. Bardwell, 72 Miss. 535, 18 So. 377, 1895 Miss. LEXIS 39 (Miss. 1895).

2. Indictment.

For form of indictment, see State v. Bridgforth, 112 Miss. 221, 72 So. 922, 1916 Miss. LEXIS 92 (Miss. 1916).

Indictment must allege accused officers knew bank to be insolvent. State v. McLean, 109 Miss. 526, 68 So. 772, 1915 Miss. LEXIS 190 (Miss. 1915).

Indictment charging defendant was president of bank and received $75.00 deposit knowing it insolvent, sufficient. State v. Taylor, 106 Miss. 850, 64 So. 740, 1914 Miss. LEXIS 27 (Miss. 1914).

Words "Seventy-Five dollars" denotes money and not other property. State v. Taylor, 106 Miss. 850, 64 So. 740, 1914 Miss. LEXIS 27 (Miss. 1914).

Indictment not bad for failure to state kind and character of money deposited. State v. Taylor, 106 Miss. 850, 64 So. 740, 1914 Miss. LEXIS 27 (Miss. 1914).

Indictment held demurrable where it did not show how any pecuniary obligation was to be affected. State v. Starling, 90 Miss. 252, 42 So. 203, 1907 Miss. LEXIS 32 (Miss. 1907).

Indictment held demurrable for joinder of separate offenses in single count. State v. Walker, 88 Miss. 592, 41 So. 8, 1906 Miss. LEXIS 164 (Miss. 1906).

It is essential under this section [Code 1942, § 2152] to charge that the bank was insolvent. State v. Bardwell, 72 Miss. 535, 18 So. 377, 1895 Miss. LEXIS 39 (Miss. 1895).

3. Evidence.

In prosecution of banker for receiving money on deposit knowing bank was insolvent, state's evidence that assets consisting of deposit certificates issued under deposit guaranty law were worth much less than face value held improperly excluded, notwithstanding statute authorizing issuance of bonds to pay outstanding certificates, where such bonds had not been sold. State v. Johnson, 166 Miss. 591, 148 So. 389, 1933 Miss. LEXIS 392 (Miss. 1933).

4. Miscellaneous.

Under this section [Code 1942, § 2152] no conviction could be had for violations committed between the first and second decisions of the court where the court first held the statute did not apply to a particular state of facts; to convict of an offense committed after a decision of the courts holding a criminal statute not applicable to to the facts and before its reversal would be to violate the constitutional provision against the infliction of cruel and unusual punishment, and the statute as a legislative enactment. State v. Longino, 109 Miss. 125, 67 So. 902, 1915 Miss. LEXIS 124 (Miss. 1915).

Under the law as it formerly existed, a violation of the statute in receiving a deposit by a banker does not necessarily make him liable to attachment for having "fraudulently contracted the debt;" but such guilt may be considered in determining that issue. The court stating that the statute was intended for the protection of the public, and it has no regard to the intent or purpose of the person receiving the deposit. Hughes v. Lake, 63 Miss. 552, 1886 Miss. LEXIS 137 (Miss. 1886).

RESEARCH REFERENCES

Am. Jur.
10 Am. Jur. 2d, Banks and Financial Institutions §§ 455 et seq.

CJS.
9 C.J.S., Banks and Banking §§ 780 et seq.

§ 97-19-49. Registering animal falsely; giving false pedigree.

If any person shall, by any false pretense whatever, obtain from any person, club, association, society, or company for improving the breed of cattle, horses, sheep, swine, or goats, or other domestic animal, the registration of any animal in the herd register, or other register of such person, club, association, society, or company, or a transfer of any such registration, and every person who shall knowingly publish or give to any person, club, association, society, or company a false pedigree of any animal, shall be guilty of a misdemeanor, and, on conviction, shall be fined not exceeding five hundred dollars, or imprisoned in the county jail not exceeding six months, or both.

HISTORY: Codes, 1892, § 1090; 1906, § 1170; Hemingway's 1917, § 899; 1930, § 926; 1942, § 2155; Laws, 1888, p. 90.

Cross References — Registration of livestock brands, see §§ 69-29-101 et seq.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am. Jur.
32 Am. Jur. 2d, False Pretenses §§ 1 et seq.

CJS.
3B C.J.S., Animals §§ 32 et seq.
35 C.J.S., False Pretenses §§ 1 et seq.

§ 97-19-51. Selling property previously sold or encumbered.

If any person shall sell, barter, or exchange or mortgage, or give deed of trust on, any property, real or personal, which he had before sold, bartered, or exchanged, or obligated himself to sell, barter, or exchange, or which he had mortgaged, or in any manner encumbered, or on which he knows there is a lien of any kind by contract or by law, without informing the person to whom he so sells, barters, exchanges, or bargains, or mortgages or gives deed of trust on it, of the exact state of the property as affected by said acts or of the lien or incumbrance thereon, he shall be guilty of obtaining under false pretenses whatever he received from the person dealing with him, and shall, on conviction, be punished therefor, as for obtaining goods under false pretenses.

HISTORY: Codes, 1880, § 2813; 1892, § 1088; 1906, § 1168; Hemingway's 1917, § 895; 1930, § 921; 1942, § 2151; Laws, 1900, ch. 96.

Cross References — Lien of executions, see § 13-3-139.
Purchase money security interests, see §§ 75-9-107, 75-9-301, 75-9-312.
Removal of property levied upon, see § 97-9-69.
Removal of property subject to lien, generally, see §§ 97-17-73 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Bulk transfers.
3. Indictment.
4. Jurisdiction over offense.
5. Punishment.

1. In general.

Where accused was convicted of the crime of selling three bales of cotton on which there was a lien, without informing the purchaser of the exact status of the cotton as affected by the lien, and where in the past years the accused sold such cotton and brought money to the lienor and also had sold other cotton subject to such liens and deposited proceeds to lienor's account, lien on the bales had been waived and the conviction would be reversed. Dickerson v. State, 224 Miss. 305, 80 So. 2d 74, 1955 Miss. LEXIS 495 (Miss. 1955).

One of the material elements of obtaining money under false pretenses is knowledge on the part of the seller. Breland v. State, 222 Miss. 792, 77 So. 2d 300, 1955 Miss. LEXIS 665 (Miss. 1955).

A material element of the crime of obtaining money under false pretenses is that the false representation must have been relied on by the party defrauded. Breland v. State, 222 Miss. 792, 77 So. 2d 300, 1955 Miss. LEXIS 665 (Miss. 1955).

Where a purchaser employed an attorney because he did not rely upon the vendor's statement that there was nothing against the land except for indebtedness owed to the bank and the attorney had not discovered the existence of a federal tax lien, the vendor could not have been convicted of having obtained money under false pretenses because the purchaser did not rely upon the representation. Breland v. State, 222 Miss. 792, 77 So. 2d 300, 1955 Miss. LEXIS 665 (Miss. 1955).

In a prosecution charging false pretenses in that the defendant mortgaged a parcel of land to the prosecuting witness after he had already conveyed most of his interest therein to another, the indictment charging that defendant in consideration thereof received a sum of money was not supported by proof of the receipt of property other than money, and consequently a conviction thereof constituted reversible error. Hales v. State, 186 Miss. 413, 191 So. 273, 1939 Miss. LEXIS 241 (Miss. 1939).

Gist of offense of obtaining money or property through false pretenses based on failure to notify purchaser of lien or incumbrance held intent of seller to cheat and defraud purchaser. Simmons v. State, 160 Miss. 582, 135 So. 196, 1931 Miss. LEXIS 213 (Miss. 1931).

Where purchaser of automobile had good title against mortgagee, and therefore was not defrauded, mortgagor or seller was not guilty of obtaining money by false pretenses. Simmons v. State, 160 Miss. 582, 135 So. 196, 1931 Miss. LEXIS 213 (Miss. 1931).

Vendor not informing purchaser of lien not guilty where purchaser knew of it. Overall v. State, 128 Miss. 59, 90 So. 484, 1921 Miss. LEXIS 299 (Miss. 1921).

Sale of property under a lien coupled with a failure to disclose the fact to the seller, constitutes the statutory crime. State v. Mitchell, 109 Miss. 91, 67 So. 853, 1915 Miss. LEXIS 118 (Miss. 1915).

This section [Code 1942, § 2151] does not apply to a case where mortgaged personal property is exchanged for other property and money does not pass. State v. Austin, 23 So. 34 (Miss. 1898).

2. Bulk transfers.

Since the Bulk Sales Law [Code 1942, § 274], voiding sale of entire stock of merchandise in gross as to creditors not furnished with required information does not expressly or by implication declare its violation to be a crime, nor purport to impose a criminal penalty therefore, the court in determining whether a party could be indicted under this section [Code 1942, § 2151] must construe the statutes strictly. Fox v. State, 207 Miss. 538, 42 So. 2d 740, 1949 Miss. LEXIS 362 (Miss. 1949).

Seller could not be indicted under this section for violation of Bulk Sales Act (Code 1942, § 274), making sale of entire stock of merchandise in gross void for failure to give notice to creditors, in absence of any proof that any of the property was impressed at the time of the sale with a purchase money lien for the unpaid purchase price thereof. Fox v. State, 207 Miss. 538, 42 So. 2d 740, 1949 Miss. LEXIS 362 (Miss. 1949).

3. Indictment.

An indictment charging that the accused sold a bale of cotton on which he had given a deed of trust and a lien and without informing the purchaser of the cotton of the existence of the lien, was full and complete and did not charge more than one offense in a single count. Jones v. State, 226 Miss. 535, 84 So. 2d 799, 1956 Miss. LEXIS 431 (Miss. 1956).

Under this statute [Code 1942, § 2151], the indictment must describe the property obtained or received with the same reasonable certainty as is required in prosecutions for larceny, and the proof must correspond to the allegations, in order that the accused may be informed of the charge against him so that he may prepare to defend against such charge, and that he may not be subject to a second prosecution for the same offense. Hales v. State, 186 Miss. 413, 191 So. 273, 1939 Miss. LEXIS 241 (Miss. 1939).

What constitutes property under this section [Code 1942, § 2151] is a very material element of the indictment. State v. Collins, 186 Miss. 448, 191 So. 126, 1939 Miss. LEXIS 239 (Miss. 1939).

An indictment charging the defendant with obtaining money by false pretenses, by mortgaging previously mortgaged property and describing the property as it was described in the deed of trust given by the defendant as being "his entire interest in any and all crops of cotton, corn, and all other agricultural products raised by him, and any hand he may employ during the year 1935 and raised on land belonging to himself or any other land he may cultivate during said year, together with any and all cotton or corn that may be due the said defendant as rent for said year 1935," insufficiently describes the property to sustain a conviction thereunder, even in view of Code 1930, § 2130, which provides for the mortgaging of after-acquired property, since such statutory provision is limited to chattels of the character described or limited as to localities or at the time of the execution of the instrument. State v. Collins, 186 Miss. 448, 191 So. 126, 1939 Miss. LEXIS 239 (Miss. 1939).

Indictment charging defendant unlawfully and feloniously sold property on which there was a valid lien, without informing the purchaser of its existence, defendant then and there well knowing the existence of the lien, and that defendant did in that manner obtain $15,000.00 from the purchaser, held sufficient. State v. Fetterman, 115 Miss. 828, 76 So. 673, 1917 Miss. LEXIS 266 (Miss. 1917).

4. Jurisdiction over offense.

Where acts material and essential to a crime are committed partly in one county and partly in another, the first of the counties which prosecutes has jurisdiction. Murray v. State, 98 Miss. 594, 54 So. 72, 1910 Miss. LEXIS 97 (Miss. 1910).

5. Punishment.

A defendant convicted of obtaining a buyer's money under false pretenses by selling property on which defendant had previously given a lien without informing the buyer of the lien, would be sentenced under Code 1942, § 2149 which prescribes three years' imprisonment as maximum. Jones v. State, 226 Miss. 535, 84 So. 2d 799, 1956 Miss. LEXIS 431 (Miss. 1956).

RESEARCH REFERENCES

Am. Jur.
32 Am. Jur. 2d, False Pretenses § 26.

CJS.
35 C.J.S., False Pretenses §§ 1 et seq.

§ 97-19-53. Substituting child to deceive parent or guardian.

Every person to whom an infant, under the age of six years, shall be confided for nursing, education, or any other purpose, who shall, with intent to deceive any parent or guardian of such child, substitute and produce to such parent or guardian another child in the place of the one so confided, shall, upon conviction, be punished by imprisonment in the penitentiary not exceeding seven years.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 4(52); 1857, ch. 64, art. 104; 1871, § 2568; 1880, § 2810; 1892, § 1085; 1906, § 1165; Hemingway's 1917, § 892; 1930, § 918; 1942, § 2148.

RESEARCH REFERENCES

Am. Jur.
32 Am. Jur. 2d, False Pretenses §§ 1 et seq.

CJS.
35 C.J.S., False Pretenses §§ 1 et seq.

§ 97-19-55. Bad checks, electronically converted checks or electronic commercial debits and insufficient funds.

(1) It shall be unlawful for any person with fraudulent intent:

(a) To make, draw, issue, utter, deliver, or authorize any check, draft, electronically converted check, or electronic commercial debit to obtain money, delivery of other valuable property, services, the use of property or credit extended by any licensed gaming establishment drawn on any real or fictitious bank, corporation, firm or person, knowing at the time of making, drawing, issuing, uttering, delivering or authorizing said check, draft, order, electronically converted check, or electronic commercial debit that the maker, drawer or payor has not sufficient funds in or on deposit with such bank, corporation, firm or person for the payment of such check, draft, order, electronically converted check, or electronic commercial debit in full, and all other checks, drafts or orders, or electronic fund transfers upon such funds then outstanding;

(b) To close an account without leaving sufficient funds to cover all outstanding checks, electronically converted check, or electronic commercial debit written or authorized on such account.

(2) For purposes of Sections 97-19-55 through 97-19-69:

(a) "Check" includes a casino marker issued to any licensed gaming establishment.

(b) "Credit" means an arrangement or understanding with a bank, corporation, firm or person for the payment of a check or other instrument.

(c) "Electronically converted check" means a single-entry electronic debit transaction initiated with a check and cleared through the ACH Network as an Accounts Receivable Entry, a Point of Purchase Entry, or a Back Office Conversion Entry.

(d) "Electronic commercial debit" means an electronic debit transaction initiated through the ACH Network by a person for commercial, and not consumer, purposes whereby (i) the payor has signed an agreement to pay the payee for goods or services provided, (ii) as part of that agreement and as a condition thereof the payor provides the payee its bank and account information for the purposes of initiating such a debit in payment for the service or goods provided, (iii) the payee delivers such goods or services to the payor in reliance upon the agreement and the payor's debit authorization, and (iv) the payee initiates such a debit for such purposes. This definition does not include a consumer transaction governed by the Federal Electronic Fund Transfer Act (15 USC Section 1693 et seq.) and its implementing Regulation E (12 CFR Part 205) or a credit transaction governed by Section 75-4A-101 et seq., Mississippi Code of 1972.

(e) "Payor" means the party making payment through the referenced transaction.

(f) "Payee" means the party receiving payment through the referenced transaction.

(g) "Payor bank" is the bank on whom the payor's funds are drawn for the purposes of making payment through the referenced transaction.

(h) "Payee bank" is the bank through which payee is collecting funds for deposit into the payee's account by using the referenced transaction.

HISTORY: Codes, 1942, § 2153-01; Laws, 1972, ch. 476, § 1; Laws, 1983, ch. 523, § 1; Laws, 1998, ch. 477, § 1; Laws, 2002, ch. 311, § 1; Laws, 2009, ch. 454, § 2; Laws, 2015, ch. 323, § 1; Laws, 2016, ch. 331, § 1, eff from and after passage (approved Apr. 4, 2016).

Editor's Notes — Laws of 1972, ch. 476, § 11, provides as follows:

"SECTION 11. Nothing herein shall be construed to abate or discontinue any prosecution now pending or hereafter commenced for offenses committed prior to the passage of this act upon the statute or statutes hereby repealed, and any and all such prosecutions may be commenced, continued and prosecuted to conclusion under the statute or statutes hereby repealed to the same extent as though this act had not been passed."

Cross References — Recovery of civil penalty for violation of this section, see § 11-7-12.

Prima facie evidence of identity of party issuing, uttering or delivering check, see § 97-19-62.

Monetary penalties or restitution imposed upon person convicted of violating this section, see § 97-19-67.

District attorney authorized to assist in recovery and distribution of restitution from persons issuing bad checks, see § 97-19-73.

Procedures for making a complaint of a bad check and for making restitution on a bad check, and the consequences of a failure to make restitution, see § 97-19-75.

Direction that the district attorney file a court complaint upon the failure of one accused of writing a bad check to make restitution, see § 97-19-79.

JUDICIAL DECISIONS

ANALYSIS

I. UNDER PRESENT LAW.

1. In general.
2. Sufficiency of evidence.
3. Fraudulent Intent.
4. Implementation.
5.-14. [Reserved for future use.]

II. UNDER FORMER § 97-19-1.

15. In general.
16. Obtaining property under false pretense.
17. Check given for pre-existing debt.
18. Instructions.
19. Malicious prosecution.
20. Decisions under earlier bad check laws.
21. Indictment.

I. UNDER PRESENT LAW.

1. In general.

Appellate court affirmed the denial of an inmate's petition for post-conviction relief where the inmate admitted that he passed a bad check in an amount that exceeded $100, and therefore committed a felony in violation of Miss. Code Ann. § 97-19-55. Dobbs v. State, 932 So. 2d 878, 2006 Miss. App. LEXIS 153 (Miss. Ct. App. 2006).

An agreement that a check would be cashed on a future date at most obligated the payor that there would be sufficient funds on deposit on that date, which represents a future obligation as to payment of the check not contemplated by the false pretenses statute, this section. Henderson v. State, 534 So. 2d 554, 1988 Miss. LEXIS 554 (Miss. 1988).

Evidence presented a jury issue as to whether manufacturer's parting with furniture was in exchange for check given by defendant, or in furtherance of an agreement between the parties that the manufacturer would always be one load of furniture behind in receiving payment, which was resolved by the jury's finding defendant guilty of false pretenses by delivery of a bad check. Parker v. State, 484 So. 2d 1033, 1986 Miss. LEXIS 2756 (Miss. 1986).

In prosecution for false pretenses by delivery of a bad check, it was not error for the state to cross-examine a witness who had once been married to defendant and to whom defendant had been furnishing child support. Parker v. State, 484 So. 2d 1033, 1986 Miss. LEXIS 2756 (Miss. 1986).

Defendant was improperly convicted of obtaining valuable services by false pretenses where defendant, who had promised to pay the prosecuting witness $300 if she would emcee a bridal show, gave the victim a bad check after the show was completed; reliance on the check must have been the efficient inducement for the services, and since the services were performed before the check came into existence, the check was given in payment of a debt, thus taking the transaction outside the scope of this section. Hindman v. State, 378 So. 2d 663, 1980 Miss. LEXIS 1818 (Miss. 1980).

2. Sufficiency of evidence.

Evidence, including testimony from bank employee that defendant received regular monthly account statements, that defendant's account was closed due to returned checks, and that a few days after the closure defendant would have received an account closure notification, was legally sufficient to convict defendant of false pretenses under Miss. Code Ann. § 97-19-55. Lyles v. State, 12 So. 3d 532, 2009 Miss. App. LEXIS 263 (Miss. Ct. App. 2009).

Evidence presented to the jury was legally sufficient and the guilty verdict was not against the overwhelming weight of the evidence because (1) the witness provided sufficient testimony to identify defendant as the man who passed the forged check, and recounted at trial why defendant stood out in the witness's memory and (2) the witness recalled accepting the check for over the amount in question from defendant in exchange for the groceries. Brown v. State, 829 So. 2d 93, 2002 Miss. LEXIS 310 (Miss. 2002).

3. Fraudulent Intent.

In wife's contempt action against former husband, the wife presented no evidence that the husband issued the checks for child support, which the wife did not present to the bank for months, with fraudulent intent. Therefore, there was no justification for the chancellor to award any statutory damages under Miss. Code Ann. § 11-7-12 regarding the checks that were returned for insufficient funds, and for which the husband's efforts to make good on the amounts were rebuffed by the wife. Broome v. Broome, 832 So. 2d 1247, 2002 Miss. App. LEXIS 858 (Miss. Ct. App. 2002).

4. Implementation.

District court's award of attorney's fees to prevailing parties was reversed and vacated, where plaintiffs were originally prosecuted under Miss. Code Ann. § 97-19-55, and had signed waivers of their right to counsel under a District Attorney policy for implementing § 97-19-55 which defendants challenged succesfully. Nonetheless, the district court's award of attorney's fees to plaintiffs was an abuse of discretion. Bailey v. Mississippi, 407 F.3d 684, 2005 U.S. App. LEXIS 6794 (5th Cir. Miss. 2005).

5.-14. [Reserved for future use.]

II. UNDER FORMER § 97-19-1.

15. In general.

One indispensable element of the crime of false pretense in giving a bad check, is the receiving of value for the check at the very time it is delivered, that is the seller must part with something of value on the belief that the check is good at that particular time. Pollard v. State, 244 So. 2d 729, 1971 Miss. LEXIS 1341 (Miss. 1971).

The fact that under the statute a prima facie case of false pretenses is made by proof of the fact that a person has given a check for value and at a time when he had no or insufficient funds on deposit to pay the check, did not render the statute invalid on the ground that it compelled a defendant to testify against himself. Ray v. State, 229 So. 2d 579, 1969 Miss. LEXIS 1253 (Miss. 1969).

The conviction of a defendant for violation of this section [Code 1942, § 2152], on an indictment which affirmatively alleged that at the time he issued the check he knew he did not have sufficient funds in the bank with which the check could be paid, must be reversed where the state's evidence showed affirmatively that, at the time the check was issued, the defendant had sufficient funds in his bank account to pay it. Edwards v. State, 217 So. 2d 14, 1968 Miss. LEXIS 1252 (Miss. 1968).

In order for this section [Code 1942, § 2153] to apply it must be shown that the property was then and there delivered to the accused in exchange for his check and on the faith that the check was presently good. Kitchens v. Barlow, 250 Miss. 121, 164 So. 2d 745, 1964 Miss. LEXIS 450 (Miss. 1964).

The maker of a check given in payment of debt for services rendered, which was returned marked "no acct.", could not be convicted under this section [Code 1942, § 2153], since conviction would violate § 30 of the Constitution prohibiting imprisonment for debt. Blakeney v. State, 206 Miss. 85, 39 So. 2d 767, 1949 Miss. LEXIS 243 (Miss. 1949).

Affidavit which follows precisely the form set out in Code 1942, § 2154, and charges that check was issued with intent to defraud is sufficient to charge defendant with violation of this section [Code 1942, § 2153]. Moore v. State, 205 Miss. 151, 38 So. 2d 693, 1949 Miss. LEXIS 421 (Miss. 1949).

Where a check was drawn by the agent of the defendant, and the evidence does not disclose that the defendant knew of the issuance of the check, but negatives his presence or participation in its execution, a conviction is not authorized, since where there is no knowledge of the act there can be no intent as to its effect.

Lovelace v. State, 191 Miss. 62, 2 So. 2d 796, 1941 Miss. LEXIS 146 (Miss. 1941).

16. Obtaining property under false pretense.

Where the defendant received three used cars on Thursday, and his check, which was returned for insufficient funds, was deposited the following Tuesday, the defendant having asked the dealer to hold the check until the following week, and the seller frequently allowed dealers to take a car one day and mail in a check several days later, the sale of the cars was a credit sale and not an exchange for value based on the belief that the check was good at the moment it was delivered, and the judgment of conviction of false pretense in the giving of a bad check would be reversed. Pollard v. State, 244 So. 2d 729, 1971 Miss. LEXIS 1341 (Miss. 1971).

The common-law rule that one who obtained goods by means of worthless check is not guilty of cheating is changed by this section, as amended in 1948. Kitchens v. Barlow, 250 Miss. 121, 164 So. 2d 745, 1964 Miss. LEXIS 450 (Miss. 1964).

Though there is in force a bad check statute, and prosecutions may be lodged thereunder, the giving of a bad check may under certain circumstances constitute the offense of obtaining property under false pretenses. Blakeney v. State, 216 Miss. 211, 62 So. 2d 313, 1953 Miss. LEXIS 626 (Miss. 1953).

Where purchasers of cattle at auction sales were required before obtaining the possession of cattle to pay for them in cash and where the accused after purchasing cattle issued his check and subsequently the cattle were delivered and then the check was dishonored because of insufficient funds, the accused could be prosecuted for obtaining property under false pretenses. Blakeney v. State, 216 Miss. 211, 62 So. 2d 313, 1953 Miss. LEXIS 626 (Miss. 1953).

17. Check given for pre-existing debt.

An essential element of the offense under this section [Code 1942, § 2153] is the making and delivering of the check to another person for value, and thereby obtaining from such other person money, goods, or other property of value, but this section [Code 1942, § 2153] does not cover the obtaining of goods where they have already been delivered and have passed completely out of the seller's possession. Jackson v. State, 251 Miss. 529, 170 So. 2d 438, 1965 Miss. LEXIS 879 (Miss. 1965).

This section [Code 1942, § 2153] does not cover the obtaining of goods where the goods have already been delivered, have passed completely out of the possession of the seller and away from his hands and premises in a previously completed transaction or transactions, although those transactions may have been at previous hours on the same day. Kitchens v. Barlow, 250 Miss. 121, 164 So. 2d 745, 1964 Miss. LEXIS 450 (Miss. 1964).

This section [Code 1942, § 2153] has no application to check given in discharge of pre-existing debt. Broadus v. State, 205 Miss. 147, 38 So. 2d 692, 1949 Miss. LEXIS 420 (Miss. 1949).

This law is not to be extended by construction to include past deliveries of property for check. Broadus v. State, 205 Miss. 147, 38 So. 2d 692, 1949 Miss. LEXIS 420 (Miss. 1949).

Under this section [Code 1942, § 2153], there must be an exchange of goods for check at time of delivery of check, and there is no violation of law, if at time purchaser delivers check to seller, the goods for which check is given have been delivered, and have passed completely out of possession of seller and away from his hands and premises. Broadus v. State, 205 Miss. 147, 38 So. 2d 692, 1949 Miss. LEXIS 420 (Miss. 1949).

18. Instructions.

Granting of instruction that state has made prima facie case of intent to defraud payee if check is presented to bank on which drawn within thirty days after delivery and there is insufficient funds in bank in maker's name to pay check is error, where all facts are in evidence and sharp issue between prosecution and defense is drawn. Moore v. State, 205 Miss. 151, 38 So. 2d 693, 1949 Miss. LEXIS 421 (Miss. 1949).

Obtaining of money and issuance and delivery of check constituted one transaction and peremptory instruction in favor of defendant charged with violation of this section [Code 1942, § 2153] is properly refused when defendant obtained $20 from one refusing to make loan but agreeing to cash check and not more than five minutes elapsed between delivery of money and delivery of check, parties were together during this interval, and money was delivered upon faith that check was good. Moore v. State, 205 Miss. 151, 38 So. 2d 693, 1949 Miss. LEXIS 421 (Miss. 1949).

19. Malicious prosecution.

The institution of a criminal proceeding under this section [Code 1942, § 2153], if merely for the purpose of collecting a debt, may render the prosecution malicious. Kitchens v. Barlow, 250 Miss. 121, 164 So. 2d 745, 1964 Miss. LEXIS 450 (Miss. 1964).

A declaration alleging that, for the purpose of collecting a debt, an agent, while acting on behalf of the store to which the check had been given, made an affidavit charging the plaintiff with the issuance of a bad check was sufficient in an action against the store and the agent for malicious prosecution and abuse of criminal process. Kitchens v. Barlow, 250 Miss. 121, 164 So. 2d 745, 1964 Miss. LEXIS 450 (Miss. 1964).

Institution of criminal proceeding under "bad check law" would render prosecution malicious, where check was issued for goods already delivered, notwithstanding such transactions were completed at previous hours of day on which check was issued. Grenada Coco Cola Co. v. Davis, 168 Miss. 826, 151 So. 743, 1934 Miss. LEXIS 351 (Miss. 1934).

Malice or wantonness held established in malicious prosecution, where corporation through its acting general manager instituted criminal prosecution under "bad check law" and check was issued for goods delivered prior to issuance of check. Grenada Coco Cola Co. v. Davis, 168 Miss. 826, 151 So. 743, 1934 Miss. LEXIS 351 (Miss. 1934).

Corporation's acting general manager who signed blank affidavit for prosecution under "bad check law" held charged with corporation's knowledge that goods for which check was issued had been delivered prior to issuance of check. Grenada Coco Cola Co. v. Davis, 168 Miss. 826, 151 So. 743, 1934 Miss. LEXIS 351 (Miss. 1934).

Where corporation's acting general manager signed blank affidavit for prosecution under "bad check law" and sent affidavit to justice of peace who instituted prosecution, justice of peace became agent of corporation which became responsible for subsequent arrest and prosecution. Grenada Coco Cola Co. v. Davis, 168 Miss. 826, 151 So. 743, 1934 Miss. LEXIS 351 (Miss. 1934).

When creditors resort to criminal processes and to arrests under criminal charges for collection of their debts, courts will not be diligent in interfering with amounts of damages fixed by juries for malicious prosecution. Grenada Coco Cola Co. v. Davis, 168 Miss. 826, 151 So. 743, 1934 Miss. LEXIS 351 (Miss. 1934).

Institution of criminal proceeding under Bad Check Law, if merely for purpose of collecting debt, would render prosecution malicious. Odom v. Tally, 160 Miss. 797, 134 So. 163, 1931 Miss. LEXIS 191 (Miss. 1931).

20. Decisions under earlier bad check laws.

Worthless Check Act, not requiring intent to defraud or knowledge of insufficiency of funds, and providing for dismissal of prosecution on payment of check violates constitutional provision prohibiting imprisonment for debt. State v. Johnson, 163 Miss. 521, 141 So. 338, 1932 Miss. LEXIS 70 (Miss. 1932).

Statute [Code 1942, § 2153] not violated where defendant told prosecuting witness he did not have money in bank to cover check given him but promised to deposit it to protect the check. Hammack v. State, 114 Miss. 611, 75 So. 436, 1917 Miss. LEXIS 67 (Miss. 1917).

21. Indictment.

Indictment must allege defendant's knowledge of insufficiency of funds to meet check. State v. Puckett, 127 Miss. 415, 90 So. 113, 1921 Miss. LEXIS 240 (Miss. 1921).

Indictment for false pretenses alleging nonpayment of bank check held insufficient. State v. Puckett, 127 Miss. 415, 90

So. 113, 1921 Miss. LEXIS 240 (Miss. 1921).

Intention to defraud must be alleged in indictment for obtaining money by bad check. Herron v. State, 118 Miss. 420, 79 So. 289, 1918 Miss. LEXIS 91 (Miss. 1918); McBride v. State, 141 Miss. 186, 104 So. 454, 1925 Miss. LEXIS 181 (Miss. 1925).

OPINIONS OF THE ATTORNEY GENERAL

Judge is mandated to issue arrest warrant for violator if and when judge is satisfied there exists probable cause to believe that crime has been committed and defendant has committed it; issuance of bad check with intent to defraud is crime, even though it may have been passed by non-resident and even though it may be for less than $100.00. Horan, Nov. 18, 1992, A.G. Op. #92-0868.

Check to be submitted for payment at future date, and not at time of giving of check, would not support conviction under this section if check at future time proved worthless. Martin, Jan. 12, 1994, A.G. Op. #93-0834.

The Justice Court Clerk is required to accept any affidavit charging a crime which a person wishes to file with the Court, including affidavits charging allegations of the bad check statutes. See § 97-19-55 et seq. Ammons, June 28, 1995, A.G. Op. #95-0284.

The participation of the District Attorney's office is not necessary for a person to be prosecuted under Sections 97-19-67 and this section. Ammons, June 28, 1995, A.G. Op. #95-0284.

Under § 97-19-67, the prosecution of a person for violation of this section (bad check violation) is commenced by the filing of a complaint by the district attorney's office (pursuant to 97-19-79), the court must impose a fee up to eight-five percent of the face value of the check. However, if the prosecution of a person for bad check violation was not commenced by the filing of a complaint by the district attorney, then the court should not impose the fee. Carter, August 2, 1995, A.G. Op. #95-0388.

If there is no fraudulent intent on the part of the maker or drawer of the check at the time the check was issued, then a stop payment order would not constitute a violation of this section. Smith, November 8, 1996, A.G. Op. #96-0784.

If the circumstances are such that the maker or drawer of the check knew at the time the check was issued that the account had insufficient funds to cover the check, and later issued a stop payment order with intent to defraud, then a violation of Section 97-19-55 may well have occurred. Smith, November 8, 1996, A.G. Op. #96-0784.

Sections 97-19-39 and 97-19-41 are a possible charge against an individual who writes a check with the intent to stop payment prior to the check being honored, even if the account has sufficient funds to cover the check. See also Section 97-19-55. Smith, November 8, 1996, A.G. Op. #96-0784.

Prosecution under the forgery and counterfeiting statutes, Sections 97-21-1 et seq., should occur when a person attempts to cash a check by forging another's name, not for knowingly writing a check with insufficient funds to cover the amount. Stricklin, March 27, 1998, A.G. Op. #98-0158.

Once a district attorney files a complaint and proceeds with prosecution under the statute, the defendant should be arrested on the warrant that has been issued and prosecution should continue as in any other criminal case. Mark, May 15, 1998, A.G. Op. #98-0262.

A person who post-dates a check may not be prosecuted under this section if the check is later dishonored. Hudson, February 5, 1999, A.G. Op. #99-0028.

The issuer of a bad check may be charged under the statute unless the full amount of the check is paid to the receiver of the check. O'Bryant, Mar. 22, 2002, A.G. Op. #02-0101.

This section does not override Section 75-67-515(10) and allow a check casher to pursue criminal charges against the maker of insufficient fund checks. James, July 7, 2003, A.G. Op. 03-0291.

It is unlawful for any person with fraudulent intent to make or issue a check, knowing at the time of the making of the check that the maker or drawer doesn't have sufficient funds in or on deposit with the bank for the payment of the check in full, and all other checks upon such funds then outstanding. Whether or not specific actions of an individual constitute a crime is a factual determination that must be made by a court of competent jurisdiction. White, March 30, 2007, A.G. Op. #07-00165, 2007 Miss. AG LEXIS 67.

RESEARCH REFERENCES

ALR.

Construction and effect of "bad check" statute with respect to check in payment of pre-existing debt. 59 A.L.R.2d 1159.

Criminal liability of corporate officer who issues worthless checks in corporate name. 68 A.L.R.2d 1269.

Reasonable expectation of payment as affecting offense under "worthless check" statutes. 9 A.L.R.3d 719.

Application of "bad check" statute with respect to postdated checks. 52 A.L.R.3d 464.

Cashing check at bank at which account is maintained as violation of bad check statutes. 75 A.L.R.3d 1080.

Constitutionality of "bad check" statute. 16 A.L.R.4th 631.

Am. Jur.

32 Am. Jur. 2d, False Pretenses §§ 16, 62 et seq.

CJS.

35 C.J.S., False Pretenses §§ 40-45.

Practice References.

Erik Gerding, Negotiable Instruments Under the U.C.C.

Ronald L. Schoenberg, Criminal Law Deskbook (Matthew Bender).

Harold Weisblatt, Checks, Drafts, and Notes (Matthew Bender).

§ 97-19-57. Bad checks, electronically converted checks, electronic commercial debits; presumption of fraudulent intent; notice that check or electronic fund transfer has not been paid; notice returned undelivered as evidence of intent to defraud; transactions involving motor vehicles.

(1) As against the maker, drawer or payor thereof, the making, drawing, issuing, uttering, delivering, or initiation of a check, draft, order, electronically converted check, or electronic commercial debit payment of which is refused by the drawee, shall be prima facie evidence and create a presumption of intent to defraud and of knowledge of insufficient funds in, or on deposit with, such bank, corporation, firm or person, provided such maker, drawer or payor shall not have paid the holder or payee thereof the amount due thereon, together with a service charge of Forty Dollars ($40.00), within fifteen (15) days after receiving notice that such check, draft, order, electronically converted check, or electronic commercial debit has not been paid by the drawee or payor's bank.

(2) For purposes of Section 11-7-12, the form of the notice provided for in subsection (1) of this section for a check, draft, order, or electronically converted check shall be sent by regular mail and shall be substantially as follows: "This statutory notice is provided pursuant to Section 97-19-57, Mississippi Code of 1972. You are hereby notified that a check, draft, order, or electronically converted check numbered ________, apparently issued by you

on ________ (date), drawn upon ________ (name of bank), and payable to ________, has been dishonored. Pursuant to Mississippi law, you have fifteen (15) days from receipt of this notice to tender payment of the full amount of such check, draft or order, or electronically converted check plus a service charge of Forty Dollars ($40.00), the total amount due being $ ________. Failure to pay this amount in full within the time specified above shall be prima facie evidence of and create a presumption of both the intent to defraud and the knowledge of insufficient funds in, or on deposit with, such bank in violation of Section 97-19-55."

(3) For purposes of Section 97-19-67, the form of the notice provided for in subsection (1) of this section for a check, draft, order, or electronically converted check shall be sent by regular mail, supported by an affidavit of service by mailing, and shall be substantially as follows: "This statutory notice is provided pursuant to Section 97-19-57, Mississippi Code of 1972. You are hereby notified that a check, draft, order, or electronically converted check numbered ________, apparently issued by you on ________ (date), drawn upon ________ (name of bank), and payable to ________, has been dishonored. Pursuant to Mississippi law, you have fifteen (15) days from receipt of this notice to tender payment of the full amount of such check, draft or order, or electronically converted check plus a service charge of Forty Dollars ($40.00), the total amount due being $ ________. Unless this amount is paid in full within the time specified above, the holder may assume that you delivered the instrument with intent to defraud and may turn over the dishonored instrument and all other available information relating to this incident to the proper authorities for criminal prosecution."

(4) For purposes of Sections 11-7-12 and 97-19-67, the form of notice provided for in subsection (1) of this section for an electronic commercial debit shall be sent by regular mail, supported by an affidavit of service by mailing, and shall be substantially as follows: "This statutory notice is provided pursuant to Section 97-19-57, Mississippi Code of 1972. You are hereby notified that on ____________ (date) an electronic commercial debit was initiated by ____________ (name of payee bank) on behalf of ____________ (payee) to ____________ (name of payor bank) through the ACH Network requesting a payment in the amount of $ ____________ to ____________ (payee) from your account pursuant to invoice number ________ and our agreement dated ____________, but that payment has been dishonored. Pursuant to Mississippi law, because the payee delivered ____________ (goods or service) to you in reliance upon the agreement, you have fifteen (15) days from receipt of this notice to tender payment of the full amount of such electronic commercial debit plus a service charge of Forty Dollars ($40.00), the total amount due being $ ________. Failure to pay this amount in full within the time specified above shall be prima facie evidence of and create a presumption of both the intent to defraud and the knowledge of insufficient funds in, or on deposit with, such bank in violation of Section 97-19-55, and the payee may assume that you entered into such agreement with intent to defraud and may turn over all documentation related to the dishonored electronic commercial debit to the proper authorities for criminal prosecution."

(5) If any notice is returned undelivered to the sender after such notice was mailed to the address printed on the check, draft or order, or to the address given by the accused at the time of issuance of the instrument, such return shall be prima facie evidence of the maker's or drawer's intent to defraud.

(6) Affidavit of service by mail shall be adequate if made in substantially the following form:

"STATE OF ______________
COUNTY OF ______________

______________, being first duly sworn on oath, deposes and states that he/she is at least eighteen (18) years of age and that on (date) ______________, 2 ____, he/she served the attached Notice of Dishonor by placing a true and correct copy thereof securely enclosed in an envelope addressed as follows:

____
____
____

and deposited the same, postage prepaid, in the United States mail at __________________ __________________.

____
(signature)

Subscribed to and sworn before me, this the _______ day of __________________, 2_______.

____
(Notary Public)

My commission expires:
(SEAL)"

(7) Without in any way limiting the provisions of this section, this section shall apply to a draft for the payment of money given for a motor vehicle even if such payment is conditioned upon delivery of documents necessary for transfer of a valid title to the purchaser.

HISTORY: Codes, 1942, § 2153-02; Laws, 1972, ch. 476, § 2; Laws, 1983, ch. 523, § 2; Laws, 1992, ch. 513, § 1; Laws, 1999, ch. 436, § 1; Laws, 2000, ch. 364, § 2; Laws, 2001, ch. 328, § 1; Laws, 2002, ch. 312, § 1; Laws, 2004, ch. 374, § 1; Laws, 2015, ch. 323, § 2, eff from and after July 1, 2015.

Cross References — Civil penalty recoverable for violation of bad check statute, see § 11-7-12.

Dispensing of notice provided for by this section, see § 97-19-61.

Non-liability for causing arrest or imprisonment of drawer, see § 97-19-69.

District attorney authorized to assist in recovery and restitution from persons issuing bad checks, see § 97-19-73.

Procedures for making a complaint of a bad check and for making restitution on a bad check, and the consequences of a failure to make restitution, see § 97-19-75.

Direction that the district attorney file a court complaint upon the failure of one accused of writing a bad check to make restitution, see § 97-19-79.

JUDICIAL DECISIONS

ANALYSIS

I. UNDER CURRENT LAW

1. Presumption of guilt.
2.-10. [Reserved for future use.]

I. UNDER CURRENT LAW

1. Presumption of guilt.

In a case in which plaintiff sought compensation for the time that he served in prison because of his criminal convictions for issuing and delivering bad checks, the appellate court found that despite being given ample opportunity to prove his innocence, plaintiff failed to do so. Even though the convictions were reversed, plaintiff was unable to rebut the statutory presumption of guilt under Miss. Code Ann. § 97-19-57. Higgins v. State, 202 So. 3d 1274, 2016 Miss. App. LEXIS 365 (Miss. Ct. App. 2016).

2.-10. [Reserved for future use.]

II. UNDER FORMER LAW

11. Under former § 97-19-3.

Affidavit charging violation of Code 1942, § 2153, which follows precisely the form set out in this section [Code 1942, § 2154], and charges that check was issued with intent to defraud is sufficient to charge defendant with violation of Code 1942, § 2153. Moore v. State, 205 Miss. 151, 38 So. 2d 693, 1949 Miss. LEXIS 421 (Miss. 1949).

OPINIONS OF THE ATTORNEY GENERAL

Ten Dollar ($10.00) service charge is one which maker or drawer can voluntarily pay to holder to avoid certain criminal presumptions, and does not constitute part of said debt, nor does this fee meet definition of "pecuniary damages" for which restitution may be ordered by court; however, Justice Court Judge may require convicted defendant to pay fee where it was made part of restitution agreement. Little, Feb. 21, 1990, A.G. Op. #90-0106.

This section creates evidentiary presumption upon failure of defendant to pay $30; it does not create right in form of civil penalty belonging to victim for $30; such is already provided for at Miss. Code Section 11-7-12. Horan, Apr. 14, 1993, A.G. Op. #93-0220.

The service charge which is set out in this section is one which the maker or drawer can voluntarily pay to the holder to avoid certain criminal presumptions, and does not constitute part of the said debt, nor does this fee meet the definition of "pecuniary damages" for which restitution may be ordered by a court, pursuant to Section 97-19-67(4). Cotten, April 6, 1995, A.G. Op. #95-0176.

A Municipal Court Judge may require a convicted defendant to pay the holder the fee set out in this section where said fee was made part of the restitution agreement under Section 97-19-75(6). Cotten, April 6, 1995, A.G. Op. #95-0176.

Giving a notice of dishonor to the drawer imposes upon or adds to the amount of the check a service charge not to exceed $30, although this service charge cannot be obtained if suit is filed pursuant to § 11-7-12. Ross, May 15, 1998, A.G. Op. #98-0261.

RESEARCH REFERENCES

ALR.

Application of "bad check" statute with respect to post-dated checks. 29 A.L.R.2d 1181.

Construction and effect of "bad check" statute with respect to check in payment of pre-existing debt. 59 A.L.R.2d 1159.

Reasonable expectation of payment as affecting offense under "worthless check" statutes. 9 A.L.R.3d 719.

Am. Jur.

32 Am. Jur. 2d, False Pretenses §§ 16, 62 et seq.

CJS.
35 C.J.S., False Pretenses §§ 40-45, 74-76, 83.

§ 97-19-59. Repealed.

Repealed by Laws, 1983, ch. 523, §§ 7, 9, eff from and after January 1, 1984.

§ 97-19-59. [Codes, 1942, § 2153-03; Laws, 1972, ch. 476, § 3]

Editor's Notes — Former § 97-19-59 provided for notice that a check, draft or order was not paid by the drawee. For current notice provisions, see § 97-19-57.

§ 97-19-61. Bad checks, electronically converted check, electronic commercial debit; when notice need not be given.

Such notice as is provided for in Section 97-19-57 is dispensed with: (a) in the event the situs of the drawee is not in the State of Mississippi; (b) if the drawer or payor is not a resident of the State of Mississippi or has left the State of Mississippi at the time such check, draft, order, electronically converted check, or electronic commercial debit is dishonored; or (c) if the drawer or payor of such check, draft, order, electronically converted check, or electronic commercial debit did not have an account with the drawee or payor bank of such check, draft, order, electronically converted check, or electronic commercial debit at the time the same was issued or dishonored, or payment of the same is denied because the account was closed at the time the check, draft, order, or electronically converted check, or electronic commercial debit was issued or dishonored.

HISTORY: Codes, 1942, § 2153-04; Laws, 1972, ch. 476, § 4; Laws, 1983, ch. 523, § 3; Laws, 2001, ch. 328, § 2; Laws, 2015, ch. 323, § 3, eff from and after July 1, 2015.

Cross References — District attorney authorized to assist in recovery and restitution from persons issuing bad checks, see § 97-19-73.

Procedures for making a complaint of a bad check and for making restitution on a bad check, and the consequences of a failure to make restitution, see § 97-19-75.

Direction that the district attorney file a court complaint upon the failure of one accused of writing a bad check to make restitution, see § 97-19-79.

§ 97-19-62. Bad checks, electronically converted checks, electronic commercial debits; evidence of identity of party issuing, uttering or delivering check or party authorized to draw upon named account.

(1) In any prosecution or action under the provisions of Section 97-19-55, a check, draft, order, or electronically converted check for which the information required in subsections (2) and (3) of this section is available at the time of issuance, utterance or delivery shall constitute prima facie evidence of the

identity of the party issuing, uttering or delivering the check, draft, order, or electronically converted check and that such person was a party authorized to draw upon the named account.

(2) To establish prima facie evidence of the identity of the party presenting such check, draft, order, or electronically converted check, the following information regarding such identity shall be requested by the party receiving such instrument: The presenter's name, residence address and home phone number. Such information may be provided in the following manner:

(a) The information may be recorded upon the check, draft or order, or electronically converted check itself; or

(b) The number of a check-cashing identification card issued by the receiving party may be recorded on the check, draft, order, or electronically converted check. Such check-cashing identification card shall be issued only after the information required in this subsection has been placed on file by the receiving party.

(3) In addition to the information required in subsection (2) of this section, the party receiving the check, draft, order, or electronically converted check shall witness the signature or endorsement of the party presenting such instrument and, as evidence of such, the receiving party shall initial the instrument.

(4) In any prosecution or action under the provisions of Section 97-19-55 for an electronic commercial debit, the following shall constitute prima facie evidence that the payee was a party authorized to draw upon the named account for the electronic commercial debit: (i) the existence of an enforceable written agreement between the payor and the payee whereby the payee agrees to provide a good or service to the payor conditioned and in reliance upon the payor's provision of its account and bank information and agreement to pay for the good or service through an electronic commercial debit, and (ii) an invoice, bill of lading, or other business record evidencing the delivery of the good or service by the payee to the payor.

HISTORY: Laws, 1983, ch. 523, § 4; Laws, 2015, ch. 323, § 4, eff from and after July 1, 2015.

RESEARCH REFERENCES

Am. Jur.

32 Am. Jur. 2d, False Pretenses §§ 75-78, 81, 82.

CJS.

35 C.J.S., False Pretenses §§ 74-84.

§ 97-19-63. Bad checks, electronically converted checks, electronic commercial debits; statement of reason for dishonor.

(1) It shall be the duty of the drawee of any check, draft or other order for the payment of money, before refusing to pay the same to the holder thereof upon presentation, to cause to be written, printed, or stamped in plain language thereon or attached thereto, the reason for drawee's dishonor or

refusal of the same. In all prosecutions under Sections 97-19-55 through 97-19-69, the introduction in evidence of any unpaid and dishonored check, draft or other order for the payment of money, having the drawee's refusal to pay stamped or written thereon or attached thereto, with the reason therefor as aforesaid, shall be prima facie evidence of the making or uttering of said check, draft or other order for the payment of money and the dishonor thereof, and that the same was properly dishonored for the reasons written, stamped or attached by the drawee on such dishonored check, draft or other such order for the payment of money.

(2) It shall be the duty of the drawee or the payor's bank in an electronically converted check or electronic commercial debit transaction, before refusing to pay the same to the payee's bank and the payee thereof upon initiation of such a transaction through the ACH Network, to provide such notice for the reason for dishonor or refusal of the same by the payor's bank as would be required by the NACHA Operating Rules Guidelines for the reasons of insufficient funds, account closed, no account or unable to locate account, payment stopped, or uncollected funds. In all prosecutions under Sections 97-19-55 through 97-19-69, the introduction in evidence of any such notice of an unpaid and dishonored electronically converted check or electronic commercial debit properly given under the NACHA rules with the reason of insufficient funds, account closed, no account or unable to locate account, payment stopped, or uncollected funds shall be prima facie evidence of the dishonor of said electronically converted check or electronic commercial debit for the reasons recorded and noticed pursuant to the NACHA Operating Rules & Guidelines.

(3) In the case of an electronically converted check, the introduction into evidence of a check payable to the payee and signed by the drawer to authorize the transaction is prima facie evidence of the making or uttering of said electronically converted check for the payment of money.

HISTORY: Codes, 1942, § 2153-05; Laws, 1972, ch. 476, § 5; Laws, 2015, ch. 323, § 5, eff from and after July 1, 2015.

Cross References — District attorney authorized to assist in recovery and restitution from persons issuing bad checks, see § 97-19-73.

Procedures for making a complaint of a bad check and for making restitution on a bad check, and the consequences of a failure to make restitution, see § 97-19-75.

Direction that the district attorney file a court complaint upon the failure of one accused of writing a bad check to make restitution, see § 97-19-79.

§ 97-19-65. Bad checks, electronically converted checks, electronic commercial debits; each violation constitutes a separate offense.

Each making, drawing, issuing, uttering, delivering, or initiation of any such check, draft, order, electronically converted check, or electronic commercial debit as aforesaid shall constitute a separate offense.

HISTORY: Codes, 1942, § 2153-07; Laws, 1972, ch. 476, § 7; Laws, 2015, ch. 323, § 6, eff from and after July 1, 2015.

Cross References — District attorney authorized to assist in recovery and restitution from persons issuing bad checks, see § 97-19-73.

Procedures for making a complaint of a bad check and for making restitution on a bad check, and the consequences of a failure to make restitution, see § 97-19-75.

Direction that the district attorney file a court complaint upon the failure of one accused of writing a bad check to make restitution, see § 97-19-79.

§ 97-19-67. Bad checks, electronically converted checks, electronic commercial debits; penalties; restitution.

(1) Except as may be otherwise provided by subsection (2) of this section, any person violating Section 97-19-55, upon conviction, shall be punished as follows:

(a) For the first offense of violating said section, where the check, draft, order, electronically converted check, or electronic commercial debit involved be less than One Hundred Dollars ($100.00), the person committing such offense shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than Twenty-five Dollars ($25.00), nor more than Five Hundred Dollars ($500.00), or by imprisonment in the county jail for a term of not less than five (5) days nor more than six (6) months, or by both such fine and imprisonment, in the discretion of the court.

(b) Upon commission of a second offense of violating said section, where the check, draft, order, electronically converted check, or electronic commercial debit involved is less than One Hundred Dollars ($100.00), the person committing such offense shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than Fifty Dollars ($50.00) nor more than One Thousand Dollars ($1,000.00), or by imprisonment in the county jail for a term of not less than thirty (30) days nor more than one (1) year, or by both such fine and imprisonment, in the discretion of the court.

(c) Upon commission of a third or any subsequent offense of violating said section, regardless of the amount of the check, draft, order, electronically converted check, or electronic commercial debit involved, and regardless of the amount of the checks, drafts or orders involved in the prior convictions, the person committing such offense shall be guilty of a felony and, upon conviction, shall be punished by imprisonment in the State Penitentiary for a term of not less than one (1) nor more than five (5) years.

(d) Where the check, draft, order, electronically converted check, or electronic commercial debit involved shall be One Hundred Dollars ($100.00) or more, the person committing such offense, whether same be a first or second offense, shall be guilty of a felony and, upon conviction, shall be punished by a fine of not less than One Hundred Dollars ($100.00) nor more than One Thousand Dollars ($1,000.00), or by imprisonment in the State Penitentiary for a term of not more than three (3) years, or by both such fine and imprisonment, in the discretion of the court. Upon conviction of a third or any subsequent offense, the person convicted shall be punished as is provided in the immediately preceding paragraph hereof.

(2) Where the conviction was based on a worthless check, draft, order, or electronically converted check given for the purpose of satisfying a preexisting

debt or making a payment or payments on a past-due account or accounts, no imprisonment shall be ordered as punishment, but the court may order the convicted person to pay a fine of up to the applicable amounts prescribed in subsection (1)(a), (b) and (d) of this section; provided, however, that an electronic commercial debit initiated following the delivery of goods or services that were provided in reliance upon the agreement for payment through that means shall not be considered payment for a preexisting debt or a past-due account or accounts for the purposes of this section.

(3) In addition to or in lieu of any penalty imposed under the provisions of subsection (1) or subsection (2) of this section, the court may, in its discretion, order any person convicted of violating Section 97-19-55 to make restitution in accordance with the provisions of Sections 99-37-1 through 99-37-23 to the holder or payee of any check, draft, order, electronically converted check, or electronic commercial debit for which payment has been refused.

(4) Upon conviction of any person for a violation of Section 97-19-55, when the prosecution of such person was commenced by the filing of a complaint with the court by the district attorney under the provisions of Section 97-19-79, the court shall, in addition to any other fine, fee, cost or penalty which may be imposed under this section or as otherwise provided by law, and in addition to any order as the court may enter under subsection (3) of this section requiring the offender to pay restitution under Sections 99-37-1 through 99-37-23, impose a fee in the amount up to eighty-five percent (85%) of the face amount of the check, draft, order, electronically converted check, or electronic commercial debit for which the offender was convicted of drawing, making, issuing, uttering, delivering or authorizing in violation of Section 97-19-55.

(5) It shall be the duty of the clerk or judicial officer of the court collecting the fees imposed under subsection (4) of this section to monthly deposit all such fees so collected with the State Treasurer, either directly or by other appropriate procedures, for deposit in the special fund of the State Treasury created under Section 99-19-32, known as the "Criminal Justice Fund."

(6) After the accused has complied with all terms of the statute and the complainant or victim has been paid, the district attorney's check unit may dispose of the accused's file after one (1) year has expired after the last audit.

HISTORY: Codes, 1942, § 2153-06; Laws, 1972, ch. 476, § 6; Laws, 1983, ch. 523, § 5; Laws, 1988, ch. 551, § 6; Laws, 1994, ch. 389, § 1; Laws, 2015, ch. 323, § 7, eff from and after July 1, 2015.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (2). A comma was inserted following "subsection (1)(a)." The Joint Committee ratified the correction at its August 17, 2015, meeting.

Cross References — Recovery of civil penalty for violation of bad check statute, see § 11-7-12.

District attorney authorized to assist in recovery and restitution from persons issuing bad checks, see § 97-19-73.

Procedures for making a complaint of a bad check and for making restitution on a bad check, and the consequences of a failure to make restitution, see § 97-19-75.

Direction that the district attorney file a court complaint upon the failure of one accused of writing a bad check to make restitution, see § 97-19-79.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

JUDICIAL DECISIONS

1. Felonies.

Appellate court affirmed the denial of an inmate's petition for post-conviction relief where the inmate admitted that he passed a bad check in an amount that exceeded $100, and therefore committed a felony in violation of Miss. Code Ann. § 97-19-55. Miss. Code Ann. § 97-19-67 provided that a person found guilty of committing the offense may be fined between $ 100 and $ 1,000, may be imprisoned up to three years, or may face both a fine and prison sentence. Dobbs v. State, 932 So. 2d 878, 2006 Miss. App. LEXIS 153 (Miss. Ct. App. 2006).

A standard practice of extracting a set fine from persons accused of writing bad checks on the pain of suffering a full criminal prosecution for failure to do so violates equal protection. Moody v. State, 716 So. 2d 562, 1998 Miss. LEXIS 279 (Miss. 1998).

OPINIONS OF THE ATTORNEY GENERAL

Fine in bad check case could be suspended as in any other case, and offender could be sentenced to period of probation, violation of which would result in reinstitution of fine. Clark, July 3, 1991, A.G. Op. #91-0456.

Under subsection (1)(d) of this section, any bad check of $100 or more is classified as felony, despite some confusion created by passage of law increasing amount for grand larceny from $100 to $250. Huckaby, Feb. 25, 1993, A.G. Op. #92-0975.

The participation of the District Attorney's office is not necessary for a person to be prosecuted under this section and Section 97-19-55. Ammons, June 28, 1995, A.G. Op. #95-0284.

Under this section, the prosecution of a person for violation of Section 97-19-55 (bad check violation) is commenced by the filing of a complaint by the district attorney's office (pursuant to 97-19-79), the court must impose a fee up to eight-five percent of the face value of the check. However, if the prosecution of a person for bad check violation was not commenced by the filing of a complaint by the district attorney, then the court should not impose the fee. Carter, August 2, 1995, A.G. Op. #95-0388.

Subsection (4) of this section does not allow the court to suspend the fee set forth in section. Carter, August 2, 1995, A.G. Op. #95-0388.

RESEARCH REFERENCES

ALR.

Admissibility, in prosecution for obtaining money or property by fraud or false pretenses, of evidence of subsequent payments made by accused to victim. 10 A.L.R.3d 572.

§ 97-19-69. Bad checks, electronically converted checks, electronic commercial debits; non-liability for causing arrest or imprisonment of drawer.

In the event of the existence of prima facie evidence of fraudulent intent as defined in Section 97-19-57 and the giving of notice under Section 97-19-57, if required, any person, firm or corporation causing the arrest of the drawer of such check, draft, order, electronically converted check, or electronic commercial debit shall not be criminally or civilly liable for false arrest or false imprisonment.

HISTORY: Codes, 1942, § 2153-08; Laws, 1972, ch. 476, § 8; Laws, 1983, ch. 523, § 6; Laws, 2015, ch. 323, § 8, eff from and after July 1, 2015.

Cross References — District attorney authorized to assist in recovery and restitution from persons issuing bad checks, see § 97-19-73.

Procedures for making a complaint of a bad check and for making restitution on a bad check, and the consequences of a failure to make restitution, see § 97-19-75.

Direction that the district attorney file a court complaint upon the failure of one accused of writing a bad check to make restitution, see § 97-19-79.

JUDICIAL DECISIONS

ANALYSIS

1.-10. [Reserved for future use.]
11. Under former § 97-19-3.

1.-10. [Reserved for future use.]

11. Under former § 97-19-3.

A cause of action for malicious prosecution was not stated in a declaration which did not allege that the defendant justice of the peace had any knowledge of the truth or falsity of the affidavit charging plaintiff with violation of Code 1942, § 2153 at the time of issuance of the warrant, did not allege that the justice of the peace had any financial interest in the money obtained by plaintiff when he issued the warrant, did not allege that the justice of the peace, at the time of issuing the warrant, had personal knowledge that the prosecution was being instituted for the collection of a civil debt, and did not allege that the justice of the peace did not have territorial jurisdiction of the offense charged in the affidavit. Kitchens v. Barlow, 250 Miss. 121, 164 So. 2d 745, 1964 Miss. LEXIS 450 (Miss. 1964).

§ 97-19-71. Fraud in connection with state or federally funded assistance programs; penalty.

(1) Any person who knowingly:

(a) Fails, by false statement, misrepresentation, impersonation, or other fraudulent means, to disclose a material fact used in making a determination as to such person's qualification to receive aid or benefits or services under any state or federally funded assistance program; or

(b) Fails to disclose a change in circumstances in order to obtain or continue to receive under any such program aid or benefits or services to which he is not entitled or in an amount larger than that to which he is entitled, or who knowingly aids and abets another person in the commission of any such act is guilty of fraud.

(2) Any person who knowingly:

(a) Uses, transfers, acquires, traffics, alters, forges or possesses;

(b) Attempts to use, transfer, acquire, traffic, alter, forge or possess; or

(c) Aids and abets another person in the use, transfer, acquisition, trafficking, alteration, forgery or possession of a food stamp, a food stamp identification card, an electronic benefits transfer card or the benefits accessed by such card, an authorization for the purchase of food stamps, a certificate of eligibility for medical services, or a Medicaid identification card, for profit or in any manner not authorized by law or regulations issued by the agency responsible for the administration of the state or federally funded program is guilty of fraud.

(3) Any person who knowingly:

(a) Exchanges food purchased or obtained with; or

(b) Attempts to exchange food purchased or obtained with benefits or an electronic benefits transfer card under the federal Food and Nutrition Program for cash or anything of value other than food, is guilty of fraud.

(4) Any person having duties in the administration of a state or federally funded assistance program who fraudulently misappropriates, attempts to misappropriate, or aids and abets in the misappropriation of, a food stamp, an authorization for food stamps, a food stamp identification card, an electronic benefits transfer card, the benefits accessible by such card, a certificate of eligibility for prescribed medicine, a Medicaid identification card, or assistance from any other state or federally funded program with which he has been entrusted or of which he has gained possession by virtue of his position, or who knowingly fails to disclose any such fraudulent activity, is guilty of fraud.

(5) Any person who:

(a) Knowingly files, attempts to file, or aids and abets in the filing of, a claim for services to a recipient of benefits under any state or federally funded assistance program for services which were not rendered; knowingly files a false claim for nonauthorized items or services under such a program; or knowingly bills the recipient of benefits under such a program, or his family, for an amount in excess of that provided for by law or regulations; or

(b) In any way knowingly receives, attempts to receive, or aids and abets in the receipt of unauthorized payment as provided herein is guilty of fraud.

(6) Any person who knowingly signs, or aids and abets any person to sign, a false application for the replacement of benefits or aid to which that person is entitled claiming that person's benefits or aid was not received, is guilty of fraud.

(7) Any person convicted of the crime of fraud under this section shall be:

(a) Punished by imprisonment in the State Penitentiary for a term not exceeding three (3) years, and fined not less than One Thousand Dollars ($1,000.00) nor more than Ten Thousand Dollars ($10,000.00); or

(b) Punished by imprisonment in the county jail for a term not exceeding one (1) year, and fined not less than One Hundred Dollars ($100.00) nor more than One Thousand Dollars ($1,000.00); and

(c) Ordered to make full restitution of the money or services or the value of those services unlawfully received; and

(d) Where the legislation creating a program allows, suspended from participation in the program for the length of time allowed by the legislation creating the program.

(8) This section shall not prohibit prosecution under any other criminal statute of this state or the United States.

HISTORY: Laws, 1981, ch. 530, § 1; Laws, 2008, ch. 342, § 1, eff from and after July 1, 2008.

Cross References — Investigation and prosecution of offenses under this section, see §§ 43-1-23, 43-1-25.

Plea of guilty or conviction under this section as constituting prima facie evidence of wrongful obtaining benefits in a civil action by department of public welfare to recover benefits paid, see § 43-1-27.

Criminal and civil liability for violations of Medicaid Fraud Control Act, see §§ 43-13-201 et seq.

Procedures for making a complaint of a bad check and for making restitution on a bad check, and the consequences of a failure to make restitution, see § 97-19-75.

Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see § 97-43-1 et seq.

Statute of limitation for prosecution for felonious assistance program fraud, see § 99-1-5.

JUDICIAL DECISIONS

1. In general.

Since the principal offenses of welfare fraud as defined in this section include attempts, an indictment for a principal welfare fraud offense is in no way defective because it employs the word "attempt," and the state is not limited at trial to proof only of the attempt. McCullum v. State, 487 So. 2d 1335, 1986 Miss. LEXIS 2457 (Miss. 1986).

A defendant convicted of welfare fraud could be sentenced as a recidivist since her 2 earlier convictions for forgery of 2 separate checks on 2 separate dates constituted separate incidents at different times, notwithstanding that the checks had been purloined from the same person and the same name had been forged on each check. McCullum v. State, 487 So. 2d 1335, 1986 Miss. LEXIS 2457 (Miss. 1986).

Indictment charging that defendant knowingly attempted to receive an unauthorized payment of food stamps by knowingly submitting a false affidavit regarding ATP card lost or stolen, to which the specific affidavit on which the indictment was based was attached, fairly and adequately charged an offense under this section, and fairly notified defendant of the nature and cause of the accusation against her. McCullum v. State, 487 So. 2d 1335, 1986 Miss. LEXIS 2457 (Miss. 1986).

Proof of delivery of check made payable to 2 parties and indorsed by each of those parties, without more, is insufficient, in context of criminal prosecution for food stamp fraud, to establish that one of parties received given portion of face amount of check; accordingly, such facts are not sufficient to undergird conviction predicated thereon. Edwards v. State, 469 So. 2d 68, 1985 Miss. LEXIS 1917 (Miss. 1985).

OPINIONS OF THE ATTORNEY GENERAL

Violation of this section is felony and justice court may not accept guilty plea to this crime. Phillips Sept. 9, 1993, A.G. Op. #93-0565.

A prosecution for fraud in connection with state or federally funded assistance programs under this section must be commenced within two years from the commission of such offense, but a prosecution under Miss. Code Section 97-7-42 for the fraudulent use of food coupons dispensed by the state welfare department may begin at any time without a time limitation. Taylor, July 18, 1997, A.G. Op. #97-0407.

One guilty of receiving more Temporary Assistance for Needy Families than that to which he or she is entitled may be punished either as a felon under this section or as a misdemeanor under § 43-17-25. Taylor, November 6, 1998, A.G. Op. #98-0665.

RESEARCH REFERENCES

ALR.

Criminal liability under state laws in connection with application for, or receipt of, public welfare payments. 22 A.L.R.4th 534.

Filing of false insurance claims for medical services as grounds for disciplinary action against dentist, physician, or other medical practitioner. 70 A.L.R.4th 132.

Am. Jur.

32 Am. Jur. 2d, False Pretenses § 43.

79 Am. Jur. 2d, Welfare Laws §§ 111, 112.

§ 97-19-73. District attorney authorized to assist in recovery and distribution of restitution from persons issuing bad checks; construction of Sections 97-19-73 through 97-19-79.

(1) In addition to such powers and duties as may be otherwise provided by law, the district attorney of each circuit court district in the state is hereby authorized, in his discretion, and in accordance with the provisions of Sections 97-19-73 through 97-19-79, to assist complainants in the recovery and distribution of restitution from persons accused of violating Section 97-19-55, Mississippi Code of 1972, relating to the issuance of bad checks, whether conviction for such violation may constitute a misdemeanor or a felony.

(2) Sections 97-19-73 through 97-19-79 shall not be construed as amending or repealing the provisions of Sections 97-19-55 through 97-19-69, Mississippi Code of 1972, nor the provisions of any other law prohibiting and prescribing penalties for similar violations, but shall be supplementary and in addition thereto.

HISTORY: Laws, 1988, ch. 551, § 1, eff from and after July 1, 1988.

Cross References — White-collar crime investigations, see § 7-5-59.

Liability of tax collector for certain taxes paid for by check that was returned because of insufficient funds, see §§ 27-1-7, 27-1-13.

Definition of "restitution" for the purpose of this section, see § 97-19-75.

OPINIONS OF THE ATTORNEY GENERAL

A District Attorney may contract with a private individual or an agency for the collection of bad checks pursuant to Sections 97-19-73 through 97-19-79. However, the State Auditor's Office should be contacted concerning the proper manner in which such an individual or agency should be paid. Fortenberry, February 14, 1996, A.G. Op. #96-0020.

An individual who receives a bad check may file a complaint with the district attorney's office, and the district attorney's office should notify the accused that a complaint has been filed; the district attorney may also request that a warrant be issued against the accused; if the accused responds to the notice, the district attorney should enter into a restitution agreement with the accused in order to collect the amount money owed to the complainant, but if the accused fails to respond to the notice or fails to comply with the restitution agreement, the district attorney should proceed with the criminal charges against the accused; it is not necessary for the district attorney to attach the original check in order to file the criminal complaint. Graham, Apr. 12, 2002, A.G. Op. #02-0168.

RESEARCH REFERENCES

ALR.
Constitutionality of "bad check" statute. 16 A.L.R.4th 631.

Am. Jur.
32 Am. Jur. 2d, False Pretenses §§ 16, 62 et seq.

CJS.
35 C.J.S., False Pretenses, §§ 40-45.

§ 97-19-75. Bad check complaint procedures; restitution procedures.

(1) The holder of any check, draft or order for the payment of money which has been made, drawn, issued, uttered or delivered in violation of Section 97-19-55, Mississippi Code of 1972, may, after complying with the provisions of Section 97-19-57, Mississippi Code of 1972, present a complaint to the district attorney. The complaint shall be accompanied by the original check, draft or order upon which the complaint is filed and the return receipt showing mailing of notice under Section 97-19-57, Mississippi Code of 1972. Not more than one (1) check, draft or order shall be included within a single complaint. Upon receipt of such complaint, the district attorney shall evaluate the complaint to determine whether or not the complaint is appropriate to be processed by the district attorney.

(2) If, after filing a complaint with the district attorney, the complainant wishes to withdraw the complaint for good cause, the complainant shall pay a fee of Thirty Dollars ($30.00) to the office of the district attorney for processing such complaint. Upon payment of the processing fee and withdrawal of the complaint, the district attorney shall return the original check, draft or order to the complainant.

(3) After approval of the complaint by the district attorney, a warrant may be issued by any judicial officer authorized by law to issue arrest warrants, and the warrant may be held by the district attorney. After issuance of a warrant or upon approval of a complaint by the district attorney, the district attorney shall issue a notice to the individual charged in the complaint, informing him that a warrant has been issued for his arrest or that a complaint has been received by the district attorney and that he may be eligible for deferred prosecution for a violation of Section 97-19-55, Mississippi Code of 1972, by voluntarily surrendering himself to the district attorney within ten (10) days, Saturdays, Sundays and legal holidays excepted, from receipt of the notice. Such notice shall be sent by United States mail.

(4)(a) If the check is not a casino marker, and the accused voluntarily surrenders himself within the time period as provided by subsection (3) of this section, the accused shall be presented with the complaint and/or warrant and prosecution of the accused may be deferred upon payment by the accused of a service charge in the amount of Forty Dollars ($40.00) to the district attorney and by execution of a restitution agreement as hereinafter provided.

(b) If the check is a casino marker, and the accused voluntarily surrenders himself within the time period as provided by subsection (3) of this section, the accused shall be presented with the complaint and/or warrant, and prosecution of the accused may be deferred upon payment by the accused of a service charge in the amounts specified in this paragraph (b) to the district attorney and by execution of a restitution agreement as hereinafter provided. The amounts of the service charge are as follows:

(i) Forty Dollars ($40.00), if the amount of the check or draft is equal to or less than One Hundred Dollars ($100.00).

(ii) Fifty Dollars ($50.00), if the face amount of the check or draft is more than One Hundred Dollars ($100.00) but does not exceed Three Hundred Dollars ($300.00).

(iii) Seventy-five Dollars ($75.00), if the face amount of the check or draft is more than Three Hundred Dollars ($300.00) but does not exceed One Thousand Dollars ($1,000.00).

(iv) One Hundred Fifty Dollars ($150.00), if the face amount of the check or draft is more than One Thousand Dollars ($1,000.00) but does not exceed Two Thousand Five Hundred Dollars ($2,500.00).

(v) Five Hundred Dollars ($500.00), if the face amount of the check or draft is more than Two Thousand Five Hundred Dollars ($2,500.00) but does not exceed Ten Thousand Dollars ($10,000.00).

(vi) Ten percent (10%) of the face amount of the check or draft, if the face amount of the check or draft is more than Ten Thousand Dollars ($10,000.00).

(5) For the purposes of Sections 97-19-73 through 97-19-81, the term "restitution" shall mean and be defined as the face amount of any check, draft or order for the payment of money made, drawn, issued, uttered or delivered in violation of Section 97-19-55, Mississippi Code of 1972, plus a service charge payable to the complainant in the amount of Thirty Dollars ($30.00).

(6) After an accused has voluntarily surrendered himself and paid the service charge as provided by subsection (4) of this section, the district attorney may enter into a restitution agreement with the accused prescribing the terms by which the accused shall satisfy restitution to the district attorney on behalf of the complainant. The terms of such agreement shall be determined on a case-by-case basis by the district attorney, but the duration of any such agreement shall be no longer than a period of six (6) months. No interest shall be charged or collected on restitution monies. The restitution agreement shall be signed by the accused and approved by the district attorney before it is effective. If the accused does not honor each term of the restitution agreement signed by him, the accused may be proceeded against by prosecution under the

provisions of Sections 97-19-55 through 97-19-69, Mississippi Code of 1972, and as provided by Section 97-19-79. If the accused makes restitution and pays all charges set out by statute or if the accused enters into a restitution agreement as set out above and honors all terms of such agreement, then if requested, the original check may be returned to the accused and a photocopy retained in the check file.

(7) If the holder of any check, draft or order for the payment of money presents to the district attorney satisfactory evidence that the original check, draft or order is unavailable and satisfactory evidence of the check, draft or order is presented in the form of bank records or a photographic copy of the instrument, whether from microfilm or otherwise, then the procedures provided for in this section may be followed in the absence of the original check, draft or order.

HISTORY: Laws, 1988, ch. 551, § 2; Laws, 1990, ch. 566, § 1; Laws, 1992, ch. 513, § 2; Laws, 1999, ch. 368, § 1; Laws, 2009, ch. 454, § 3, eff from and after July 1, 2009.

Cross References — Construction that this section does not amend or repeal §§ 97-19-55 through 97-19-69, see § 97-19-73.

Authority of district attorneys to assist in accordance with this section in the recovery of restitution from persons issuing bad checks, see § 97-19-73.

Accounting and distribution of all funds received by the district attorney pursuant to the provisions of this section, see § 97-19-77.

OPINIONS OF THE ATTORNEY GENERAL

Although subsection (5) of this section allows District Attorney to impose service charge payable to complainant in amount of $15 as restitution, by its own terms this definition of restitution only applies to Miss. Code Sections 97-19-73 through 97-19-81. Horan, Apr. 14, 1993, A.G. Op. #93-0220.

Under this section, holder of bad check may present complaint to District Attorney, accompanied by original bad check; after receiving bad check complaint from merchant District Attorney may present complaint to judge for warrant to be issued and District Attorney may hold warrant and send notice to defendant; alternatively, under subsection (3), District Attorney may choose not to obtain warrant at that time, but may simply notify defendant that complaint has been filed. Horan, Apr. 21, 1993, A.G. Op. #93-0224.

This section specifically allows the district attorney to hold a warrant without actually serving it while attempting collection of a bad check. Pacific, March 24, 1995, A.G. Op. #95-0146.

The service charge which is set out in Section 97-19-57 is one which the maker or drawer can voluntarily pay to the holder to avoid certain criminal presumptions, and does not constitute part of the said debt, nor does this fee meet the definition of "pecuniary damages" for which restitution may be ordered by a court, pursuant to Section 97-19-67(4). Cotten, April 6, 1995, A.G. Op. #95-0176.

A Municipal Court Judge may require a convicted defendant to pay the holder the fee set out in Section 97-19-57 where said fee was made part of the restitution agreement under subsection (6) of this section. Cotten, April 6, 1995, A.G. Op. #95-0176.

The statute provides for the payment by the maker of a service charge of $15 for the collection on a bad check after notice of dishonor has been given. Ross, May 15, 1998, A.G. Op. #98-0261.

A district attorney may enter into a restitution agreement that contains a partial payment plan for the restitution amount; however, such payment plan may not exceed a period of six months. Crews, July 10, 1998, A.G. Op. #98-0372.

The $40.00 referred to in subsection (4) is not a criminal fine and is, rather, a service charge paid by the defendant to the district attorney's office for the benefit of deferring bad check charges against the defendant, and the fee should be paid by the defendant along with the execution of a restitution agreement in order to defer/forbear prosecution on the bad check; thus, as the service charge is not a court ordered fee, the court may not suspend or reduce the amount of the service charge. Burdick, Feb. 23, 2001, A.G. Op. #2001-0104.

Criminal responsibility lies with any person including artificial persons such as corporations who, with fraudulent intent, makes, draws, issues, utters or delivers a bad check. Burdick, July 7, 2003, A.G. Op. 03-0305.

A district attorney may expend bad check funds to supplement the salary of a secretary, subject to any statutory maximum. Mitchell, Aug. 27, 2004, A.G. Op. 04-0420.

RESEARCH REFERENCES

ALR.

Constitutionality of "bad check" statute. 16 A.L.R.4th 631.

Am. Jur.

32 Am. Jur. 2d, False Pretenses §§ 16, 62 et seq.

CJS.

35 C.J.S., False Pretenses, §§ 40-45.

§ 97-19-77. Accounting and distribution of monies received with respect to bad check complaint.

(1) All monies collected by the district attorney from any complainant under subsection (2) of Section 97-19-75 and from any accused as a service charge under subsection (4) of Section 97-19-75 may be expended by the district attorney for any of the purposes authorized for the expenditure of money under Section 25-31-8, Mississippi Code of 1972 or for any law enforcement related purpose including, but not limited to, the purchase of equipment and supplies and the payment of training costs for any local law enforcement agency within the district attorney's judicial district at the discretion of the district attorney.

(2) Each district attorney in the state shall establish a clearing account in a state depository of any county within his circuit court district in which shall be deposited all such monies which the district attorney's office shall receive from an accused pursuant to any restitution agreement executed in accordance with the provisions of Section 97-19-75. The district attorney, or his designee, shall account for all monies deposited in and disbursed from such clearing account and shall be authorized and empowered to draw and issue checks on such account to such persons, in such amounts and at such times as provided for in the restitution agreement executed by the accused.

(3) If a complainant on whose behalf a restitution agreement has been executed cannot, upon diligent efforts and after a reasonable time be located, all such restitution monies as shall have been collected on his behalf shall escheat to the state and shall be forwarded by the district attorney to the State Treasurer for deposit in the special fund of the State Treasury created under

Section 99-19-32, Mississippi Code of 1972, known as the "Criminal Justice Fund."

(4) All books, documents, records and transactions relating to the receipt and expenditure of monies under the provisions of Sections 97-19-73 through 97-19-79 shall be subject to audit by the State Auditor in the same manner and in accordance with the same procedure as provided by law for other monies received and expended by the office of the district attorney.

HISTORY: Laws, 1988, ch. 551, § 3; Laws, 1994, ch. 389, § 3, eff from and after July 1, 1994.

Editor's Notes — Section 7-7-2, as added by Laws of 1984, chapter 488, § 90, and amended by Laws of 1985, chapter 455, § 14, Laws of 1986, chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor," and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws of 1989, chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws of 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Definition of "restitution" for the purpose of this section, see § 97-19-75.

Procedures for making a complaint of a bad check and for making restitution on a bad check, and the consequences of a failure to make restitution, see § 97-19-75.

OPINIONS OF THE ATTORNEY GENERAL

District attorney has the authority to use bad check unit funds to pay part of the salary of the victims' assistance coordinator. Mitchell, Feb. 19, 1992, A.G. Op. #92-0027.

A district attorney may expend funds collected through a bad check unit for appropriate law enforcement use, such as the purchase of bullet proof vests or "buy money" for undercover drug operations. Turner, August 21, 1998, A.G. Op. #98-0516.

A district attorney's office may expend funds collected through a worthless check unit to reimburse travel and other allowable expenses for witnesses who are subpoenaed to testify in criminal court. Carter, February 5, 1999, A.G. Op. #99-0032.

RESEARCH REFERENCES

ALR.

Constitutionality of "bad check" statute. 16 A.L.R.4th 631.

Am. Jur.

32 Am. Jur. 2d, False Pretenses §§ 16, 62 et seq.

CJS.

35 C.J.S., False Pretenses, §§ 40-45.

§ 97-19-79. District attorney to file court complaint upon failure of accused to make restitution.

If, after receiving notice as provided for by subsection (3) of Section 97-19-75, the accused fails to timely surrender himself to the district attorney as prescribed in the notice or, if having timely surrendered himself, the accused fails to pay the service charge prescribed by subsection (4) of Section 97-19-75 and/or fails to execute or comply with the terms of any restitution agreement executed in accordance with the provisions of Section 97-19-75, then the district attorney shall file the complaint, along with the arrest warrant, if any, which the district attorney may be holding against the accused, with the municipal court, justice court, county court or circuit court in his district having jurisdiction, and prosecution against the accused may be commenced in accordance with the provisions of Sections 97-19-55 through 97-19-69, Mississippi Code of 1972, or as otherwise provided by law. If such prosecution is commenced, the court may assess the defendant the service charge payable to the district attorney as provided in Section 97-19-75(4), Mississippi Code of 1972.

HISTORY: Laws, 1988, ch. 551, § 4; Laws, 1990, ch. 566, § 2; Laws, 1991, ch. 435, § 1, eff from and after July 1, 1991.

Cross References — Additional penalties for a conviction for writing a bad check when the prosecution was commenced by the filing of a complaint under the provisions of this section, see § 97-19-67.

Construction that this section does not amend or repeal §§ 97-19-55 through 97-19-69, see § 97-19-73.

Authority of district attorneys to assist in accordance with this section in the recovery of restitution from persons issuing bad checks, see § 97-19-73.

Definition of “restitution” for the purpose of this section, see § 97-19-75.

OPINIONS OF THE ATTORNEY GENERAL

Under this section, District Attorney may file bad check complaints with municipal court. Gorrell, Mar. 3, 1993, A.G. Op. #93-0086.

If defendant who receives notice o charge fails to surrender and pay amounts due, then District Attorney can file complaint, or arrest warrant if one has already been obtained, with municipal court, justice court, county court or circuit court, and commence prosecution under this section. Horan, Apr. 21, 1993, A.G. Op. #93-0224.

Under § 97-19-67, the prosecution of a person for violation of § 97-19-55 (bad check violation) is commenced by the filing of a complaint by the district attorney’s office (pursuant to this section), the court must impose a fee up to eight-five percent of the face value of the check. However, if the prosecution of a person for bad check violation was not commenced by the filing of a complaint by the district attorney, then the court should not impose the fee. Carter, August 2, 1995, A.G. Op. #95-0388.

RESEARCH REFERENCES

ALR.
Constitutionality of "bad check" statute. 16 A.L.R.4th 631.

Am. Jur.
32 Am. Jur. 2d, False Pretenses §§ 16, 62 et seq.

CJS.
35 C.J.S., False Pretenses, §§ 40-45.

§ 97-19-81. Right of lender to add fee to amount of loan when payment on loan made with bad check.

When an entity that is authorized by the laws of this state to make loans or grant extensions of credit is paid by check to retire all or a part of a loan or extension of credit, and such check is returned because of insufficient funds, and the lender is charged a fee or service charge as a result of such return, the lender shall be authorized to add the actual amount of such fee or service charge up to a maximum amount of Fifteen Dollars ($15.00) to the principal of the unpaid balance of the loan or extension of credit.

HISTORY: Laws, 1988, ch. 551, § 5, eff from and after July 1, 1988.

Cross References — Definition of "restitution" for the purpose of this section, see § 97-19-75.

Procedures for making a complaint of a bad check and for making restitution on a bad check, and the consequences of a failure to make restitution, see § 97-19-75.

RESEARCH REFERENCES

ALR.
Construction and effect of "bad check" statute with respect to check in payment of pre-existing debt. 59 A.L.R.2d 1159.

Constitutionality of "bad check" statute. 16 A.L.R.4th 631.

§ 97-19-83. Fraud by mail or other means of communication.

(1) Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money, property or services, or for unlawfully avoiding the payment or loss of money, property or services, or for securing business or personal advantage by means of false or fraudulent pretenses, representations or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, transmits or causes to be transmitted by mail, telephone, newspaper, radio, television, wire, electromagnetic waves, microwaves, or other means of communication or by person, any writings, signs, signals, pictures, sounds, data, or other matter across county or state jurisdictional lines, shall, upon conviction, be punished

by a fine of not more than Ten Thousand Dollars ($10,000.00) or by imprisonment for not more than five (5) years, or by both such fine and imprisonment.

(2) For the purposes of venue under the provisions of this section, any violation of this section may be prosecuted in the county in which the delivery or transmission originated, the county in which the delivery or transmission was made, or the county in which any act in execution or furtherance of the scheme occurred.

(3) This section shall not prohibit the prosecution under any other criminal statute of the state.

HISTORY: Laws, 1988, ch. 511, § 3; brought forward without change, Laws, 2014, ch. 457, § 75, eff from and after July 1, 2014.

Cross References — Organized theft or fraud enterprise applicable to conduct proscribed in this section, see § 97-43-3.1.

JUDICIAL DECISIONS

ANALYSIS

1. Ownership of property.
2. Construction with other law.

1. Ownership of property.

While outright ownership may not need be proven, the person or entity who has been the victim of actions prohibited by the statute should have a colorable claim to the property in question. Gatlin v. State, 724 So. 2d 359, 1998 Miss. LEXIS 591 (Miss. 1998).

Although the seizure of money and the institution of forfeiture proceedings does not give the government ownership of the money, it does give the government a claim to the money and, therefore, a person who subsequently attempts to claim the money and attempts to defraud the government of the money can be convicted for a violation of the statute. Gatlin v. State, 724 So. 2d 359, 1998 Miss. LEXIS 591 (Miss. 1998).

2. Construction with other law.

Where defendant defrauded furniture sellers by telephone, wire communications, or mail, defendant's second indictment for wire fraud did not conflict with double jeopardy rules, because wire fraud charge was a distinct offense, and required proof of different elements than the initial charge of false pretenses, which had been dismissed. McGee v. State, 853 So. 2d 125, 2003 Miss. App. LEXIS 159 (Miss. Ct. App.), cert. denied, 852 So. 2d 577, 2003 Miss. App. LEXIS 834 (Miss. Ct. App. 2003).

In the context of a fraudulent future promise to pay, a false pretense charge under Miss. Code Ann. § 97-19-39 does not encompass such facts. A wire fraud charge, under Miss. Code Ann. § 97-19-83, does. McGee v. State, 853 So. 2d 125, 2003 Miss. App. LEXIS 159 (Miss. Ct. App.), cert. denied, 852 So. 2d 577, 2003 Miss. App. LEXIS 834 (Miss. Ct. App. 2003).

RESEARCH REFERENCES

Practice References.

Ronald L. Schoenberg, Criminal Law Deskbook (Matthew Bender).

§ 97-19-85. Fraudulent use of identity, Social Security number, credit card or debit card number or other identifying information to obtain thing of value.

(1) Any person who shall make or cause to be made any false statement or representation as to his or another person's or entity's identity, social security account number, credit card number, debit card number or other identifying information for the purpose of fraudulently obtaining or with the intent to obtain goods, services or any thing of value, shall be guilty of a felony and upon conviction thereof for a first offense shall be fined not more than Five Thousand Dollars ($5,000.00) or imprisoned for a term not to exceed five (5) years, or both. For a second or subsequent offense such person, upon conviction, shall be fined not more than Ten Thousand Dollars ($10,000.00) or imprisoned for a term not to exceed ten (10) years, or both. In addition to the fines and imprisonment provided in this section, a person convicted under this section shall be ordered to pay restitution as provided in Section 99-37-1 et seq.

(2) A person is guilty of fraud under subsection (1) who:

(a) Shall furnish false information willfully, knowingly and with intent to deceive anyone as to his true identity or the true identity of another person; or

(b) Willfully, knowingly, and with intent to deceive, uses a social security account number to establish and maintain business or other records; or

(c) With intent to deceive, falsely represents a number to be the social security account number assigned to him or another person, when in fact the number is not the social security account number assigned to him or such other person; or

(d) With intent to deceive, falsely represents to be a representative of an entity in order to open banking accounts, obtain credit cards, or other services and supplies in the entity's name; or

(e) Knowingly alters a social security card, buys or sells a social security card or counterfeit or altered social security card, counterfeits a social security card, or possesses a social security card or counterfeit social security card with intent to sell or alter it.

HISTORY: Laws, 1993, ch. 387, § 1; Laws, 1998, ch. 555, § 1; Laws, 2009, ch. 391, § 1; brought forward without change, Laws, 2014, ch. 457, § 76, eff from and after July 1, 2014.

Cross References — Organized theft or fraud enterprise applicable to conduct proscribed in this section, see § 97-43-3.1.

Enhancement of penalty for violation of provisions of this section under certain circumstances, see § 99-19-401.

Federal Aspects— Social Security laws, see 42 USCS §§ 301 et seq.

JUDICIAL DECISIONS

1. Sufficiency of the evidence.

Trial court properly convicted defendant of fraudulent use of identity because he admitted that he had used his brother's name to conceal his identity from the police, told an ambulance attendant that he falsely used the brother's name when arrested, and continued to use his brother's identity when he was transported to a hospital for medical treatment. Dean v. State, 147 So. 3d 382, 2014 Miss. App. LEXIS 503 (Miss. Ct. App. 2014).

RESEARCH REFERENCES

ALR.

Criminal Liability for Unauthorized Use of Credit Card under State Credit Card Statutes. 68 A.L.R.6th 527.

Am. Jur.

32 Am. Jur. 2d, False Pretenses §§ 21, 31 et seq.

70A Am. Jur. 2d, Social Security and Medicare § 165.

CJS.

35 C.J.S., False Pretenses §§ 37, 64, 66.

Practice References.

Ronald L. Schoenberg, Criminal Law Deskbook (Matthew Bender).

CHAPTER 21.

FORGERY AND COUNTERFEITING

Article 1. General Provisions. 97-21-1
Article 2. Forfeiture of Property for Violations of Trademark and Recordings Laws. 97-21-101

ARTICLE 1.

GENERAL PROVISIONS.

Sec.
97-21-1. Account books kept in public offices.
97-21-3. Account books kept by corporations.
97-21-5. Certain instruments deemed writings.
97-21-7. Certificate of acknowledgment or proof of deeds and other recordable instruments.
97-21-9. Certificate or public security, share in public stock or indorsement thereof.
97-21-11. Coin operated machines; use or sale of slug or other device.
97-21-13. Counterfeiting: currency or treasury notes of United States.
97-21-15. Counterfeiting: currency of foreign countries.
97-21-17. Counterfeiting: possession of counterfeit currency with intention to utter.
97-21-19. Corporate evidences of debt signed by pretended officer.
97-21-21. Destruction, erasure, or obliteration of writing deemed forgery.
97-21-23. Engraving or possessing plate for printing bank check, note or other evidence of debt; possessing impressions made from such plate.
97-21-25. Engraving or possessing plate for printing bank check, note or other evidence of debt; when plate deemed imitation of genuine instrument.
97-21-27. Intent to defraud.
97-21-29. Making and uttering instrument in own name under pretense that it is act of another of same name.
97-21-31. Parts of several genuine instruments connected to make one instrument.
97-21-33. Penalty for forgery.
97-21-35. Pleadings, process and other court papers, licenses, or written instruments generally.
97-21-37. Possession of counterfeit bank notes or other instrument with intention to utter.
97-21-39. Railroad tickets; definition.
97-21-41. Railroad tickets; making or altering.
97-21-43. Railroad tickets; possession of forged or altered tickets.
97-21-45. Record of will or other instrument constituting evidence, judgment or decree of court, or return on process.
97-21-47. Seal of state and other government and corporate seals or their impressions.
97-21-49. Selling or offering to sell counterfeit notes or other evidence of debt, etc.
97-21-51. Unauthorized use or signing of another's name to telegram, petition or related communication.
97-21-53. Trade-marks; counterfeiting and forging of.
97-21-55. Trade-marks; possession of dies, plates, printed label or any imitation for purpose of vending imitation goods.

Sec.	
97-21-57.	Trade-marks; sale of goods bearing counterfeit stamp or label.
97-21-59.	Uttering counterfeit instrument or coin.
97-21-61.	Warrants on state treasury, United States treasury, or county, city, town or village treasury.
97-21-63.	Will, deed, certificate of acknowledgment or proof of recordable instrument.

§ 97-21-1. Account books kept in public offices.

Every person who, with intent to defraud, shall make any false entry, or shall falsely alter any entry made in any book of accounts kept in the office of the auditor of public accounts, or in the office of the treasurer of this state, or in the office of any county treasurer, or in any other public office, by which any demand or obligation, claim, right, or interest, either against or in favor of this state, or any county, city, town, or village, or any individual, shall be or purport to be discharged, diminished, increased, created, or in any manner affected, shall, upon conviction thereof, be guilty of forgery.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 4(34); 1857, ch. 64, art. 118; 1871, § 2582; 1880, § 2828; 1892, § 1107; 1906, § 1188; Hemingway's 1917, § 918; 1930, § 945; 1942, § 2174.

Editor's Notes — Section 7-7-2, as added by Laws of 1984, chapter 488, § 90, and amended by Laws of 1985, chapter 455, § 14, Laws of 1986, chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor," and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws of 1989, chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws of 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — State auditor's duty to keep and preserve books and records, see § 7-7-63.

State treasurer's duty to keep accounts and preserve books and records, see §§ 7-9-9, 7-9-53.

County books of account, see § 19-11-13.

Municipal books of account, see § 21-39-5.

Duty of chancery clerk to keep and preserve county books and records, see § 27-105-343.

Nature and sufficiency of intent to defraud, see § 97-21-27.

Penalty for forgery, see § 97-21-33.

Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see § 97-43-1 et seq.

JUDICIAL DECISIONS

1. In general.

False report of public school purporting to be signed by one without authority to do so could not be subject of forgery. Moore v. State, 107 Miss. 181, 65 So. 126, 1914 Miss. LEXIS 69 (Miss. 1914).

To constitute forgery, forged instrument must be one which if genuine might injure another. Moore v. State, 107 Miss. 181, 65 So. 126, 1914 Miss. LEXIS 69 (Miss. 1914).

An indictment is insufficient, where it fails to show how any pecuniary obligation was to be affected. State v. Starling, 90 Miss. 252, 42 So. 203, 1907 Miss. LEXIS 32 (Miss. 1907).

It is essential under this section [Code 1942, § 2174] that there should be identification of the writing in the endorsement with the one found in defendant's possession. Eldridge v. State, 76 Miss. 353, 24 So. 313, 1898 Miss. LEXIS 85 (Miss. 1898).

A city assessment roll is a book of accounts within the section [Code 1942, § 2174]. Turbeville v. State, 56 Miss. 793, 1879 Miss. LEXIS 217 (Miss. 1879).

RESEARCH REFERENCES

Am. Jur.

36 Am. Jur. 2d, Forgery § 34.

2 Am. Jur. Trials, Investigating Particular Crimes §§ 23-31 (forgery).

CJS.

37 C.J.S., Forgery §§ 26 et seq.

§ 97-21-3. Account books kept by corporations.

Every person who, with intent to defraud, shall make any false entry, or shall falsely alter any entry made in any book of accounts kept by any moneyed corporation within this state, or in any book of accounts kept by any corporation or its officers, and to be delivered or intended to be delivered to any person dealing with such corporation, by which any pecuniary obligation, claim, or credit shall be or shall purport to be discharged, diminished, increased, created, or in any manner affected, shall be guilty of forgery.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 4(35); 1857, ch. 64, art. 119; 1871, § 2583; 1880, § 2829; 1892, § 1108; 1906, § 1189; Hemingway's 1917, § 919; 1930, § 946; 1942, § 2175.

Cross References — False entries and other offenses by state trust company participants, see § 81-27-6.206.

Nature and sufficiency of intent to defraud, see § 97-21-27.

Penalty for forgery, see § 97-21-33.

Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see § 97-43-1 et seq.

RESEARCH REFERENCES

Am. Jur.

36 Am. Jur. 2d, Forgery § 18.

2 Am. Jur. Trials, Investigating Particular Crimes §§ 23-31 (forgery).

CJS.

37 C.J.S., Forgery § 28.

§ 97-21-5. Certain instruments deemed writings.

Every instrument, partly written and partly printed, or wholly printed, with a written signature thereto, and every signature of an individual, firm, or corporate body, or of any officer of such body, and every writing purporting to be such signature, shall be deemed a writing and a written instrument within the meaning of the provisions of this chapter.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 4(45); 1857, ch. 64, art. 127; 1871, § 2591; 1880, § 2836; 1892, § 1115; 1906, § 1196; Hemingway's 1917, § 926; 1930, § 953; 1942, § 2183.

Cross References — Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see § 97-43-1 et seq.

JUDICIAL DECISIONS

1. In general.

Indictment charging that defendant forged affidavit for marriage license held not to charge offense. State v. Ellis, 161 Miss. 361, 137 So. 102, 1931 Miss. LEXIS 267 (Miss. 1931).

RESEARCH REFERENCES

Am. Jur.

36 Am. Jur. 2d, Forgery § 44.

CJS.

37 C.J.S., Forgery § 15.

§ 97-21-7. Certificate of acknowledgment or proof of deeds and other recordable instruments.

If any officer authorized to take the proof or acknowledgment of any conveyance of real or personal estate, or of any other instrument which by law may be recorded, shall wilfully and falsely certify that any such conveyance or instrument was acknowledged by any party thereto, when in truth such acknowledgment was not made, or that any such instrument or conveyance was proved, when in truth such proof was not made, he shall, upon conviction, be guilty of forgery.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 4(27); 1857, ch. 64, art. 111; 1871, § 2575; 1880, § 2821; 1892, § 1097; 1906, § 1178; Hemingway's 1917, § 908; 1930, § 935; 1942, § 2164.

Cross References — Acknowledgments, see §§ 89-3-1 et seq.

Penalty for forgery, see § 97-21-33.

Forgery of certificate of acknowledgment or proof of recordable instrument, see § 97-21-63.

Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see § 97-43-1 et seq.

JUDICIAL DECISIONS

1. In general.

The indictment in a forgery prosecution was not defective for failing to identify the defrauded party where it was obvious that the persons defrauded were those who had signed the forged deed at issue, a copy of which was attached to and made a part of the indictment; the sentence of one year in the county jail was not an abuse of discretion where it was within the limitations of the sentencing statute, even though the statute under which the defendant had been prosecuted did not require a criminal intent. Sherman v. State, 359 So. 2d 1366, 1978 Miss. LEXIS 2282 (Miss. 1978).

RESEARCH REFERENCES

Am. Jur.

36 Am. Jur. 2d, Forgery §§ 10 et seq.

CJS.

37 C.J.S., Forgery § 24.

§ 97-21-9. Certificate or public security, share in public stock or indorsement thereof.

Every person who shall be convicted of having forged, counterfeited, or falsely altered any certificate or other public security issued or purporting to have been issued under the authority of this state by virtue of any law thereof, by which certificate or other public security the payment of any money, absolutely or upon contingency, shall be promised, or the receipt of any money, goods, or valuable thing shall be acknowledged; or any certificate of any share, right or interest in any public stock, created by virtue of any law of this state, issued or purporting to have been issued by any public officer, or any other evidence of any debt or liability of this state, either absolute or contingent, issued or purporting to be issued by any public officer; or any indorsement or other instrument transferring or purporting to transfer the right or interest of any holder of any such certificate, public security, certificate of stock, evidence of debt or liability, or of any person entitled to such right or interest, with intent to defraud this state, or any public officer thereof, or any other person, shall be guilty of forgery.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 4(23); 1857, ch. 64, art. 108; 1871, § 2572; 1880, § 2818; 1892, § 1094; 1906, § 1175; Hemingway's 1917, § 905; 1930, § 932; 1942, § 2161.

Cross References — County bonds and notes, see §§ 19-9-1 et seq.

Municipal bonds, see §§ 21-33-301 et seq.

School bonds, see §§ 37-59-1 et seq.

Nature and sufficiency of intent to defraud, see § 97-21-27.

Penalty for forgery, see § 97-21-33.

Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see § 97-43-1 et seq.

JUDICIAL DECISIONS

1. In general.

Indictment, sufficiently informing accused of charge, held sufficient. State v. Dotch, 126 Miss. 837, 89 So. 667, 1921 Miss. LEXIS 82 (Miss. 1921).

RESEARCH REFERENCES

ALR.

What constitutes a public record or document within statute making falsification, forgery, mutilation, removal, or other misuse thereof an offense. 69 A.L.R.2d 1095.

What constitutes a "falsely made, forged, altered, or counterfeited" security within the meaning of 18 USC § 2314, making transportation of such securities a criminal offense. 4 A.L.R. Fed. 793.

Am. Jur.

36 Am. Jur. 2d, Forgery §§ 26 et seq.

2 Am. Jur. Trials, Investigating Particular Crimes §§ 23-31 (forgery).

CJS.

37 C.J.S., Forgery §§ 1 et seq.

§ 97-21-11. Coin operated machines; use or sale of slug or other device.

Any person who shall operate or cause to be operated, or who shall attempt to operate, or attempt to cause to be operated, any automatic vending machine, slot machine, coin box telephone, or other receptacle designed to receive lawful coin of the United States of America in connection with the sale, use, or enjoyment of property or service, by means of a slug or any false, counterfeit, mutilated, sweated, or foreign coin or by any means, method, trick or device whatsoever not lawfully authorized by the owner, lessee or licensee of such machine, coin box telephone or receptacle, or who shall take, obtain, or receive from or in connection with any automatic vending machine, slot machine, coin box telephone, or other receptacle designed to receive lawful coin of the United States of America in connection with the sale, use, or enjoyment of property or service, any goods, wares, merchandise, gas, electric current, article of value, or the use or enjoyment of any telephone or telegraph facilities or service, or of any musical instrument, phonograph, or other property, without depositing in and surrendering to such machine, coin box telephone or receptacle lawful coin of the United States of America to the amount required therefor by the owner, lessee or licensee of such machine, coin box telephone or receptacle, shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding one hundred dollars ($100.00) or imprisoned in the county jail not exceeding thirty days, or both.

Any person, who, with intent to cheat or defraud the owner, lessee, licensee, or other person entitled to the contents of any automatic vending machine, slot machine, coin box telephone or other receptacle, depository, or contrivance designed to receive lawful coin of the United States of America in connection with the sale, use, or enjoyment of property or service, or who, knowing that the same is intended for unlawful use, shall manufacture for sale, or sell or give away any slug, device or substance whatsoever intended or calculated to be placed or deposited in any such automatic vending machine, slot machine, coin box telephone or other such receptacle, depository or contrivance, shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding five hundred dollars ($500.00) or imprisoned in the county jail not exceeding six months, or both. Provided, however, that this section shall not apply when a privilege license for the operation of said automatic vending machines has not been procured for the operation of said automatic vending machines by the owners thereof.

HISTORY: Codes, 1842, § 2178; Laws, 1932, ch. 267.

Cross References — Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see § 97-43-1 et seq.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

ALR.

Criminal prosecutions for use of "blue box" or similar device permitting user to make long-distance telephone calls without incurring charges. 78 A.L.R.3d 449.

§ 97-21-13. Counterfeiting: currency or treasury notes of United States.

Every person who shall be convicted of having counterfeited any currency which shall be at the time current, by custom or usage, within this state, or the treasury notes of the United States, shall be guilty of forgery.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 4(28); 1857, ch. 64, art. 112; 1871, § 2576; 1880, § 2822; 1892, § 1098; 1906, § 1179; Hemingway's 1917, § 909; 1930, § 936; 1942, § 2165; Laws, 1924, ch. 161; Laws, 2019, ch. 388, § 2, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment substituted "currency" for "of the gold or silver coin."

Cross References — Penalty for forgery, see § 97-21-33.

Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see § 97-43-1 et seq.

Person convicted of forgery under this section is guilty of a felony, see § 97-21-33.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

Making counterfeit coin and uttering it are two distinct offenses and where the charge is of making it, testimony showing only possession of suitable tools is admissible, but it is inadmissible on the charge of uttering the coin. Burgess v. State, 81 Miss. 482, 33 So. 499, 1902 Miss. LEXIS 193 (Miss. 1902).

RESEARCH REFERENCES

Am. Jur.
20 Am. Jur. 2d, Counterfeiting §§ 1 et seq.
36 Am. Jur. 2d, Forgery §§ 10 et seq.
2 Am. Jur. Trials, Investigating Particular Crimes §§ 23-31 (forgery).

CJS.
20 C.J.S., Counterfeiting §§ 1 et seq.

§ 97-21-15. Counterfeiting: currency of foreign countries.

Every person who shall be convicted of having counterfeited currency of any foreign government or country, with the intent of exporting the same to injure or defraud any foreign government or the subjects or citizens thereof, shall be guilty of forgery.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 4(29); 1857, ch. 64, art. 113; 1871, § 2577; 1880, § 2823; 1892, § 1099; 1906, § 1180; Hemingway's 1917, § 910; 1930, § 937; 1942, § 2166; Laws, 2019, ch. 388, § 3, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment substituted "currency" for "any gold or silver coin."

Cross References — Nature and sufficiency of intent to defraud, see § 97-21-27.

Penalty for forgery, see § 97-21-33.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see § 97-43-1 et seq.

RESEARCH REFERENCES

Am. Jur.
20 Am. Jur. 2d, Counterfeiting §§ 1 et seq.

CJS.
20 C.J.S., Counterfeiting §§ 1 et seq.

§ 97-21-17. Counterfeiting: possession of counterfeit currency with intention to utter.

Every person who shall have in his possession any counterfeit of any currency, which shall be at the time current in this state, knowing the same to be counterfeited, with intention to defraud or injure, by uttering the same, as true or false, or by causing the same to be so uttered, shall be guilty of forgery.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 4(38); 1857, ch. 64, art. 121; 1871, § 2585; 1880, § 2831; 1892, § 1110; 1906, § 1191; Hemingway's 1917, § 921; 1930, § 948; 1942, § 2177; Laws, 2019, ch. 388, § 4, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment substituted "currency" for "gold or silver coin."

Cross References — Nature and sufficiency of intent to defraud, see § 97-21-27.

Penalty for forgery, see § 97-21-33.

Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see § 97-43-1 et seq.

Person convicted of forgery under this section is guilty of a felony, see § 97-21-33.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

RESEARCH REFERENCES

Am. Jur.
20 Am. Jur. 2d, Counterfeiting §§ 1 et seq.

CJS.
20 C.J.S., Counterfeiting §§ 7-10.

§ 97-21-19. Corporate evidences of debt signed by pretended officer.

The false making, forging, or counterfeiting of any evidence of debt issued, or purporting to have been issued, by any corporation having authority for that purpose, to which shall be affixed the pretended signature of any person as an agent or officer of such corporation, shall be forgery, in the same manner as if such person was at the time an officer or agent of such corporation, notwithstanding there never was any such person in existence.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 4(47); 1857, ch. 64, art. 129; 1871, § 2593; 1880, § 2838; 1892, § 1117; 1906, § 1198; Hemingway's 1917, § 928; 1930, § 955; 1942, § 2185.

Cross References — Penalty for forgery, see § 97-21-33.

Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see § 97-43-1 et seq.

RESEARCH REFERENCES

Am. Jur.
36 Am. Jur. 2d, Forgery § 13.
2 Am. Jur. Trials, Investigating Particular Crimes §§ 23-31 (forgery).

CJS.
37 C.J.S., Forgery § 28.

§ 97-21-21. Destruction, erasure, or obliteration of writing deemed forgery.

The total erasure, obliteration, or destruction of any instrument of writing, with the intent to defraud, by which any pecuniary obligation or any right, interest, or claim to property, shall be or shall be intended to be created, increased, discharged, diminished, or in any manner affected, shall be forgery in the same manner and in the same degree as the false alteration of any part of such instrument of writing.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 4(43); 1857, ch. 64, art. 125; 1871, § 2589; 1880, § 2834; 1892, § 1113; 1906, § 1194; Hemingway's 1917, § 924; 1930, § 951; 1942, § 2181.

Cross References — Nature and sufficiency of intent to defraud, see § 97-21-27.

Penalty for forgery, see § 97-21-33.

Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see § 97-43-1 et seq.

JUDICIAL DECISIONS

1. In general.

The evidence was sufficient to support a finding that a deed was a forgery under this section where the signature on the deed appeared to have been altered, the person whose signature appeared on the deed denied that the signature was his, witnesses who were familiar with his signature testified that the signature was not his, and the person who acknowledged the deed testified that she would not have acknowledged it if it appeared to have been erased or changed and that the instrument did not appear to have been the one she acknowledged. Jordon v. Warren, 602 So. 2d 809, 1992 Miss. LEXIS 226 (Miss. 1992).

RESEARCH REFERENCES

Am. Jur.

36 Am. Jur. 2d, Forgery § 19.

CJS.

37 C.J.S., Forgery § 19.

§ 97-21-23. Engraving or possessing plate for printing bank check, note or other evidence of debt; possessing impressions made from such plate.

Every person who shall be convicted of having made or engraved, or having caused or procured to be made or engraved, any plate in the form or similitude of any promissory note, bill of exchange, draft, check, certificate of deposit, or other evidence of debt, issued by any incorporated bank in this state, or by any bank incorporated under the laws of the United States, or of any state or territory, or under the laws of any foreign country or government, without the authority of such bank, with the intent of using or having the same used for the purpose of taking therefrom any impression, to be passed, sold, or altered, or of having made or caused to be made, or having in his custody or possession any plate upon which shall be engraved any figures or words which may be used for the purpose of falsely altering any evidence of debt issued by any such incorporated bank, with the intent of having the same used for such purpose, or of having or keeping in his custody or possession, without the authority of such bank, any impression taken from any such plate, with intent to have the same filled up and completed for the purpose of being passed, sold, or uttered, shall be guilty of forgery.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 4(30); 1857, ch. 64, art. 114; 1871, § 2578; 1880, § 2824; 1892, § 1103; 1906, § 1184; Hemingway's 1917, § 914; 1930, § 941; 1942, § 2170.

Cross References — When plate deemed imitation of genuine instrument, see § 97-21-25.

Penalty for forgery, see § 97-21-33.

Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see § 97-43-1 et seq.

Enhancement of penalty for violation of provisions of this section under certain circumstances, see § 99-19-401.

RESEARCH REFERENCES

Am. Jur.
36 Am. Jur. 2d, Forgery §§ 31, 32.

CJS.
20 C.J.S., Counterfeiting §§ 1 et seq.

§ 97-21-25. Engraving or possessing plate for printing bank check, note or other evidence of debt; when plate deemed imitation of genuine instrument.

Every plate specified in Section 97-21-23, shall be deemed to be in the form and similitude of the genuine instrument imitated, in either of the following cases: When the engraving on such plate resembles and is intended to conform to such parts of the genuine instrument as are engraved; or when such plate shall be partly finished, and the part so finished resembles and is intended to conform to similar parts of the genuine instrument.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 4(31); 1857, ch. 64, art. 115; 1871, § 2579; 1880, § 2825; 1892, § 1104; 1906, § 1185; Hemingway's 1917, § 915; 1930, § 942; 1942, § 2171.

Cross References — Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see § 97-43-1 et seq.

Enhancement of penalty for violation of provisions of this section under certain circumstances, see § 99-19-401.

§ 97-21-27. Intent to defraud.

Whenever, by any of the provisions of this chapter, an intent to defraud is required to constitute a forgery, it shall be sufficient if such intent appear to defraud the United States, any state or territory, and body-corporate, county, city, town, or village, or any public officer in his official capacity, any copartnership, or any one of such partners, or any real person whatever.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 4(46); 1857, ch. 64, art. 128; 1871, § 2592; 1880, § 2837; 1892, § 1116; 1906, § 1197; Hemingway's 1917, § 927; 1930, § 954; 1942, § 2184.

Cross References — Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see § 97-43-1 et seq.

JUDICIAL DECISIONS

1. In general.

In a prosecution for uttering, evidence that the defendant had previously attempted to utter the forged instrument at another location was not evidence of other criminal activity but went directly to establishing the defendant's guilt for his later attempt to cash the forged instrument, which was the crime charged. Hartfield v. State, 532 So. 2d 1237, 1988 Miss. LEXIS 456 (Miss. 1988).

RESEARCH REFERENCES

ALR.

Forgery: use of fictitious or assumed name. 49 A.L.R.2d 852.

Falsifying of money order as forgery. 65 A.L.R.3d 1307.

Evidence of intent to defraud in state forgery prosecution. 108 A.L.R.5th 593.

Am. Jur.

36 Am. Jur. 2d, Forgery §§ 31, 32.

36 Am. Jur. 2d, Forgery § 39.

CJS.

37 C.J.S., Forgery § 4.

§ 97-21-29. Making and uttering instrument in own name under pretense that it is act of another of same name.

If any person shall, with intent to injure or defraud, make any instrument in his own name, intended to create, increase, discharge, defeat, or diminish any pecuniary obligation, right or interest, or to transfer or affect any property whatever, and shall utter and pass it under the pretense that it is the act of another who bears the same name, he shall be guilty of forgery and shall be punished according to the schedule in Section 97-21-33.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 4(41); 1857, ch. 64, art. 123; 1871, § 2587; 1880, § 2833; 1892, § 1112; 1906, § 1193; Hemingway's 1917, § 923; 1930, § 950; 1942, § 2180; Laws, 2014, ch. 457, § 24, eff from and after July 1, 2014.

Cross References — Imposter as payee of commercial paper, see § 75-3-405.

Credit card forgery, see § 97-19-17.

Nature and sufficiency of intent to defraud, see § 97-21-27.

Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see § 97-43-1 et seq.

Enhancement of penalty for violation of provisions of this section under certain circumstances, see § 99-19-401.

JUDICIAL DECISIONS

1. In general.

Indorsement and receipt of proceeds of draft by person of same name as payee, wrongfully in possession, constitutes forgery. Thomas v. First Nat'l Bank, 101 Miss. 500, 58 So. 478, 1911 Miss. LEXIS 165 (Miss. 1911).

One presenting forged order for goods received from another believing it to be good held not guilty of forgery. Scott v. State, 91 Miss. 156, 44 So. 803, 1907 Miss. LEXIS 142 (Miss. 1907).

Writing held sufficient to form basis of forgery, and unnecessary to allege in indictment any intrinsic facts. McGuire v. State, 91 Miss. 151, 44 So. 802, 1907 Miss. LEXIS 140 (Miss. 1907).

OPINIONS OF THE ATTORNEY GENERAL

Prosecution under the forgery and counterfeiting statutes, should occur when a person attempts to cash a check by forging another's name, not for knowingly writing a check with insufficient funds to cover the amount. Stricklin, March 27, 1998, A.G. Op. #98-0158.

RESEARCH REFERENCES

ALR.
Forgery: use of fictitious or assumed name. 49 A.L.R.2d 852.

Am. Jur.
36 Am. Jur. 2d, Forgery §§ 7, 8.
2 Am. Jur. Trials, Investigating Particular Crimes §§ 23-31 (forgery).

CJS.
37 C.J.S., Forgery § 12.

§ 97-21-31. Parts of several genuine instruments connected to make one instrument.

When different parts of several genuine instruments shall be so placed or connected together as to produce one instrument, with intent to defraud, the same shall be forgery, in the same manner as if the parts so put together were falsely made or forged.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 4(44); 1857, ch. 64, art. 126; 1871, § 2590; 1880, § 2835; 1892, § 1114; 1906, § 1195; Hemingway's 1917, § 925; 1930, § 952; 1942, § 2182.

Cross References — Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see § 97-43-1 et seq.

RESEARCH REFERENCES

Am. Jur.
36 Am. Jur. 2d, Forgery §§ 19 et seq.
2 Am. Jur. Trials, Investigating Particular Crimes §§ 23-31 (forgery).

CJS.
37 C.J.S., Forgery § 9.

§ 97-21-33. Penalty for forgery.

(1) Except as provided in subsection (2) of this section for offenses under Sections 97-21-13, 97-21-15, 97-21-17 and 97-21-23, a person convicted of forgery shall be punished as follows:

(a) When the amount of value involved is under One Thousand Dollars ($1,000.00), by imprisonment in the county jail for a term of not more than six (6) months, or by a fine of not more than One Thousand Dollars ($1,000.00), or both, if the court finds substantial and compelling reasons why the offender cannot be safely and effectively supervised in the community, is not amenable to community-based treatment, or poses a significant risk to public safety. If such a finding is not made, the court shall suspend the sentence of imprisonment and impose a period of probation not exceeding one (1) year or a fine of not more than One Thousand Dollars ($1,000.00), or both. A person convicted of a third or subsequent offense under this paragraph (a), where the value of the property is not less than Five Hundred

Dollars ($500.00), shall be punished by imprisonment in the Penitentiary for a term not exceeding three (3) years or by a fine not exceeding One Thousand Dollars ($1,000.00), or both.

(b) When the amount of value involved is One Thousand Dollars ($1,000.00) or more but less than Five Thousand Dollars ($5,000.00), by imprisonment in the Penitentiary for a term not more than five (5) years, or a fine of not more than Ten Thousand Dollars ($10,000.00), or both.

(c) When the amount of value involved is Five Thousand Dollars ($5,000.00) or more, but less than Twenty-five Thousand Dollars ($25,000.00), by imprisonment in the Penitentiary for a term not exceeding ten (10) years, or a fine of not more than Ten Thousand Dollars ($10,000.00), or both.

(d) When the amount of value involved is Twenty-five Thousand Dollars ($25,000.00) or more, by imprisonment in the Penitentiary for a term not exceeding twenty (20) years, or be fined not more than Ten Thousand Dollars ($10,000.00), or both.

(2) A person convicted of forgery under any of the following: Section 97-21-13, relating to counterfeiting of currency or treasury notes of the United States; Section 97-21-15, relating to the counterfeiting of currency of a foreign government; Section 97-21-17, relating to possession of counterfeited currency; or Section 97-21-23, relating to engraving or possessing a plate to counterfeit certain notes, bills, drafts, checks and other evidence of debt, shall be guilty of a felony and shall be punished as follows:

(a) When the amount of value involved is less than Five Thousand Dollars ($5,000.00), by imprisonment in the custody of the Department of Corrections for a term of not more than five (5) years, or a fine of not more than Ten Thousand Dollars ($10,000.00), or both;

(b) When the amount of value involved is Five Thousand Dollars ($5,000.00) or more, but less than Twenty-five Thousand Dollars ($25,000.00), by imprisonment in the custody of the Department of Corrections for a term not exceeding ten (10) years, or a fine of not more than Ten Thousand Dollars ($10,000.00), or both;

(c) When the amount of value involved is Twenty-five Thousand Dollars ($25,000.00) or more, by imprisonment for a term not exceeding twenty (20) years, or a fine of not more than Ten Thousand Dollars ($10,000.00), or both.

(3) The total value of the forgery by the person from a single victim shall be aggregated in determining the gravity of the offense.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 4(42); 1857, ch. 64, art. 124; 1871, § 2588; 1880, § 2840; 1892, § 1119; 1906, § 1200; Hemingway's 1917, § 930; 1930, § 957; 1942, § 2187; Laws, 1928, ch. 38; Laws, 1970, ch. 343, § 1; Laws, 2003, ch. 499, § 6; Laws, 2014, ch. 457, § 25, eff from and after July 1, 2014; Laws, 2019, ch. 388, § 1, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment rewrote, divided and redesignated former (1) through (4) as (1)(a) through (d), added the exception at the beginning of the introductory paragraph of (1), deleted the former third sentence of former (1), which read: "The total value of the forgery by the person from a single victim shall be aggregated in determining the gravity of the offense," deleted the former last sentence of former (4), which read: "The total value of the forgery by the person from a single victim shall be aggregated in determining the gravity of the offense," and made stylistic changes; and added (2) and (3).

Cross References — Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see § 97-43-1 et seq.

Limitations of prosecutions, generally, see § 99-1-5.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Guilty pleas.
3. Sentence.

1. In general.

Where appellant pleaded guilty to two counts of uttering a forgery in 2004, the trial court did not err by sentencing him to one year in prison and a $1,000 fine for each count under the 2003 amendment to Miss. Code Ann. § 97-21-33. While the judge had the discretion to impose a lesser penalty as the amount forged was less than $500, he was not required to do so. Davis v. State, 975 So. 2d 905, 2008 Miss. App. LEXIS 115 (Miss. Ct. App. 2008).

Defendant was entitled to be sentenced for uttering a forgery under the amended version of Miss. Code Ann. § 97-21-33 because it was amended before his conviction became final and his sentence was legal under Miss. Code Ann. § 99-19-33; the trial judge could sentence a person to a term of not less than two years nor more than ten years. Peterson v. State, 963 So. 2d 29, 2007 Miss. App. LEXIS 517 (Miss. Ct. App. 2007).

Postconviction relief was denied in a case where defendant entered a guilty plea to the charge of uttering a forgery because a felony sentence was properly imposed under a trial court's discretion where defendant had one indictment retired to the file, and she owed restitution on a charge in another county. Tate v. State, 961 So. 2d 763, 2007 Miss. App. LEXIS 463 (Miss. Ct. App. 2007).

Where a sentence of 10 years with five years suspended was entered in a case where defendant entered a guilty plea to the charge of uttering a forgery, defendant was unable to challenge the sentence in a motion for post-conviction relief since it was not raised at the time of sentence; at any rate, the issue of disproportionality was meritless because the sentence was within the limits of Miss. Code Ann. § 97-21-33. Tate v. State, 961 So. 2d 763, 2007 Miss. App. LEXIS 463 (Miss. Ct. App. 2007).

Motion for post-conviction relief was properly dismissed based on an allegation of ineffective assistance of counsel because defendant was correctly informed of the 10-year maximum penalty for uttering forgery; however, the case was remanded for resentencing because plain error was committed when a trial court improperly imposed a 15-year sentence. Jefferson v. State, 958 So. 2d 1276, 2007 Miss. App. LEXIS 440 (Miss. Ct. App. 2007).

Defendant did not receive ineffective assistance of counsel by the failure to inform him of an amended sentence under Miss. Code Ann. § 97-21-33 because he was unable to show that he would have chosen to proceed to trial if he had been informed of such; defendant received a very favorable plea agreement under either sentencing scheme, and therefore it was unlikely that the outcome of the case would have been different. Coleman v. State, 971 So. 2d 637, 2007 Miss. App. LEXIS 420 (Miss. Ct. App. 2007), cert. denied, 2007 Miss. LEXIS 681 (Miss. Dec. 6, 2007), cert. denied, 2007 Miss. LEXIS 684 (Miss. Dec. 6, 2007), cert. denied, 973 So. 2d 244, 2007 Miss. LEXIS 686 (Miss. 2007).

In a hearing for post-conviction relief, a trial court did not err by changing a sentence imposed to reflect the amended sentencing range under Miss. Code Ann. § 97-21-33 where the facts showed that defendant entered a valid and voluntary guilty plea, but was sentenced illegally; it was an inadvertent failure of the trial court, the district attorney, and defense counsel to realize there was a change in the maximum sentence. Coleman v. State, 971 So. 2d 637, 2007 Miss. App. LEXIS 420 (Miss. Ct. App. 2007), cert. denied, 2007 Miss. LEXIS 681 (Miss. Dec. 6, 2007), cert. denied, 2007 Miss. LEXIS 684 (Miss. Dec. 6, 2007), cert. denied, 973 So. 2d 244, 2007 Miss. LEXIS 686 (Miss. 2007).

Because defendant did not receive a suspended sentence, his sentence was not illegal under Miss. Code Ann. § 47-7-33(1) (Rev. 2004), and therefore his petition for post-conviction relief was properly dismissed as untimely, as it was not filed until March 2005; under Miss. Code Ann. § 99-39-5(2), defendant only had until June 5, 2003, to file his motion for post-conviction relief, and two years' incarceration plus one year of supervision did not exceed 15 years, the maximum sentence for uttering a forgery. King v. State, 929 So. 2d 373, 2006 Miss. App. LEXIS 380 (Miss. Ct. App. 2006).

Defendant argued that his sentence was contrary to the dictates of Miss. Code Ann. § 47-7-34 because by failing to comply with the terms and conditions of postrelease supervision he could be required to serve a term exceeding the maximum allowed under the statute; defendant's sentence totaling 15 years, specifically 10 years to serve with 5 years of postrelease supervision, was unquestionably in accord with Miss. Code Ann. § 97-21-33 as it was at the time of his sentencing, and therefore, his sentence did not conflict with Miss. Code Ann. § 47-7-34. Kemp v. State, 904 So. 2d 1162, 2004 Miss. App. LEXIS 1009 (Miss. Ct. App. 2004).

Sentencing defendant to 15 years without possibility of parole, the maximum penalty for forgery, upon conviction for uttering a $35 forged check, was not unconstitutionally disproportionate in violation of Federal Constitution's Eighth Amendment's cruel and unusual punishment clause, where sentence was imposed under habitual offender statute and defendant's 2 prior burglary convictions were not "truly non-violent" offenses; court noted that defendant's sentence was for 15 years, not life. Burt v. Puckett, 933 F.2d 350, 1991 U.S. App. LEXIS 12195 (5th Cir. Miss. 1991).

A defendant convicted of uttering a forgery, who was also indicted as, and proven to be, a recidivist, was properly sentenced to 15 years in prison pursuant to Mississippi Code § 99-19-81. Burt v. State, 493 So. 2d 1325, 1986 Miss. LEXIS 2490 (Miss. 1986).

The indictment in a forgery prosecution was not defective for failing to identify the defrauded party where it was obvious that the persons defrauded were those who had signed the forged deed at issue, a copy of which was attached to and made a part of the indictment; the sentence of one year in the county jail was not an abuse of discretion where it was within the limitations of the sentencing statute, even though the statute under which the defendant had been prosecuted did not require a criminal intent. Sherman v. State, 359 So. 2d 1366, 1978 Miss. LEXIS 2282 (Miss. 1978).

In a prosecution for uttering a forgery, the case would be remanded to determine whether the maximum sentence had been improperly imposed pursuant to the habitual criminal statute, which was not part of the indictment, as required, or whether it had been properly imposed pursuant to the general sentencing statute for this crime. Bell v. State, 355 So. 2d 1106, 1978 Miss. LEXIS 2001 (Miss. 1978).

In a forgery prosecution, where the face of each check or warrant involved was copied in exact detail in the indictment and each warrant as copied showed not only the payee and his address but the check numbers and other numbers and symbols used by the departments involved, the indictment was not defective on the ground that it did not protect the defendant from prosecution by others because it did not name all the parties involved. Langston v. State, 245 So. 2d 579, 1971 Miss. LEXIS 1370 (Miss. 1971).

Judgments of conviction of forgery were not void because the court was without authority to suspend sentence, since, even if the court did lack such authority, the judgment of conviction would not be affected but only the suspension of sentence. Langston v. State, 245 So. 2d 579, 1971 Miss. LEXIS 1370 (Miss. 1971).

Failure of proof to show where the alleged crime was committed required a reversal and remand of case. Brownlee v. State, 15 So. 2d 209 (Miss. 1943).

2. Guilty pleas.

In a post-conviction appeal in which a state inmate had been sentenced to a term of 10 years in the custody of the Mississippi Department of Corrections with 10 years suspended and five years of probation for violating Miss. Code Ann. § 97-21-33, he argued unsuccessfully that his guilty plea should be set aside because he was incorrectly advised of the minimum sentence; he had been advised of the minimum and maximum sentence for the felony conviction and pled guilty to a felony charge. The minimum sentence for felony uttering a forgery was two years, not zero months, and the maximum sentence for the felony was 10 years; the inmate stated in open court that he knew the minimum and maximum sentence for the felony and that he was guilty of the felony. Bowen v. State, 995 So. 2d 844, 2008 Miss. App. LEXIS 694 (Miss. Ct. App. 2008).

3. Sentence.

Circuit court appeared to largely rely on the fact that defendant engaged in a "malicious scheme" to defraud merchants by using a computer program to create counterfeit checks. In line with the proscribed sentencing factors, and the case law, the reviewing court could not find that the circuit court abused its discretion in considering the pending charges against defendant when it sentenced defendant within the statutory limits provided in Miss. Code Ann. § 97-21-33. Davis v. State, 17 So. 3d 1149, 2009 Miss. App. LEXIS 588 (Miss. Ct. App. 2009).

In a post-conviction appeal in which a state inmate had been sentenced to a term of 10 years in the custody of the Mississippi Department of Corrections with 10 years suspended and five years of probation for violating Miss. Code Ann. § 97-21-33, he argued unsuccessfully that his sentence was invalid since the amount involved in the crime was $ 250 and the statute provided for misdemeanor penalties when the value involved was less than $ 500. Section 97-21-33 clearly stated that the imposition of the sentence was within the trial judge's discretion, and, in the present case, the trial judge noted that the inmate had an extensive list of misdemeanors and an admitted addiction to cocaine. Bowen v. State, 995 So. 2d 844, 2008 Miss. App. LEXIS 694 (Miss. Ct. App. 2008).

RESEARCH REFERENCES

ALR.

Forgery: use of fictitious or assumed name. 49 A.L.R.2d 852.

Procuring signature by fraud as forgery. 11 A.L.R.3d 1074.

Embezzlement, larceny, false pretenses or allied criminal fraud by a partner. 82 A.L.R.3d 822.

Am. Jur.

36 Am. Jur. 2d, Forgery §§ 66, 67.

2 Am. Jur. Trials, Investigating Particular Crimes §§ 23-31 (forgery).

CJS.

37 C.J.S., Forgery § 74.

§ 97-21-35. Pleadings, process and other court papers, licenses, or written instruments generally.

Every person who, with the intent to injure or defraud, shall falsely make, alter, forge, or counterfeit any instrument or writing being or purporting to be any process issued by any competent court, magistrate, or officer, or being or purporting to be any pleading or proceeding filed or entered in any court of law or equity, or being or purporting to be any certificate, order, or allowance, by any competent court, board, or officer, or being or purporting to be any license or authority authorized by any statute, or any instrument or writing being or purporting to be the act of another, by which any pecuniary demand or obligation shall be or purport to be created, increased, discharged, or diminished, or by which any right or property whatever shall be or purport to be transferred, conveyed, discharged, diminished, or in any manner affected, by which false making, forging, altering or counterfeiting any person may be affected, bound, or in any way injured in his person or property, shall be guilty of forgery.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 4(33); 1857, ch. 64, art. 117; 1871, § 2581; 1880, § 2827; 1892, § 1106; 1906, § 1187; Hemingway's 1917, § 917; 1930, § 944; 1942, § 2173.

Cross References — Process, generally, see §§ 13-3-1 et seq.

Nature and sufficiency of intent to defraud, see § 97-21-27.

Penalty for forgery, see § 97-21-33.

Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see § 97-43-1 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Instruments which may be subject of forgery.
3. Indictment.
4. Evidence.
5. Instructions.
6. Venue and Jurisdiction.

1. In general.

While it would be possible to commit the crime of obtaining money by false pretenses without committing the crime of forgery, it is extremely unlikely that an accused could be guilty of forgery and at the same time not also be guilty of obtaining money by false pretenses. Rowland v. State, 531 So. 2d 627, 1988 Miss. LEXIS 432 (Miss. 1988).

Forgery and uttering are two separate and distinct crimes. Criddle v. State, 250 Miss. 328, 165 So. 2d 339, 1964 Miss. LEXIS 465 (Miss. 1964).

The three essential elements necessary to constitute the crime of forgery are (1) there must be a false making or other alteration of some instrument in writing, (2) there must be a fraudulent intent, and (3) the instrument must be apparently capable of effecting a fraud. Dunson v. State, 223 Miss. 551, 78 So. 2d 580, 1955 Miss. LEXIS 409 (Miss. 1955).

Fraudulent intent is of the essence of forgery. Hays v. State, 207 Miss. 748, 43 So. 2d 206, 1949 Miss. LEXIS 385 (Miss. 1949); Criddle v. State, 250 Miss. 328, 165 So. 2d 339, 1964 Miss. LEXIS 465 (Miss. 1964).

An alteration in an immaterial part of an instrument and which could not injure anyone does not constitute forgery under this section [Code 1942, § 2173]. Wilson v. State, 85 Miss. 687, 38 So. 46, 1904 Miss. LEXIS 185 (Miss. 1904).

2. Instruments which may be subject of forgery.

Check, termed a due bill by prosecuting witness, held subject to forgery. Hodgkin v. State, 172 Miss. 297, 160 So. 562, 1935 Miss. LEXIS 148 (Miss. 1935).

Instrument purporting to be valid teacher's state license authorizing holder to teach in schools of Mississippi held susceptible of forgery. Bradford v. State, 171 Miss. 8, 156 So. 655, 1934 Miss. LEXIS 200 (Miss. 1934).

Accused who executed alleged first-grade teacher's license, forged names of members of board of examiners, and transferred license to another in payment of consideration, and promised that transferee would thereby be enabled to obtain position as teacher, held guilty of uttering a forged instrument. Bradford v. State, 171 Miss. 8, 156 So. 655, 1934 Miss. LEXIS 200 (Miss. 1934).

Warrant on treasurer of county based on regular allowance of the board of supervisors in accordance with a general statute, is the subject of forgery. Saucier v. State, 102 Miss. 647, 59 So. 858, 1912 Miss. LEXIS 103 (Miss. 1912).

False indorsement of the name of the payee on the back of a warrant on the treasurer of a county is a forgery. Saucier v. State, 102 Miss. 647, 59 So. 858, 1912 Miss. LEXIS 103 (Miss. 1912).

Instance of paper of which forgery may be predicated in reference to crops. France v. State, 83 Miss. 281, 35 So. 313, 1903 Miss. LEXIS 41 (Miss. 1903).

3. Indictment.

While an indictment charging the forging of one instrument and the uttering of another would doubtless be bad since this would constitute two different transactions, and the accused would be prejudiced, where the crime of forgery and uttering are joined in one indictment, it is not demurrable if the two charges are based on the same transaction or series of connected transactions. Criddle v. State, 250 Miss. 328, 165 So. 2d 339, 1964 Miss. LEXIS 465 (Miss. 1964).

Where an indictment was for forgery of a written order for four sacks of rye and where the allegations of the indictment were that the writing involved was capable of effecting a fraud, and was altered with a fraudulent intent, the accused's demurrer to indictment based on the contention that the writing in question was not susceptible of forgery, was properly overruled. Dunson v. State, 223 Miss. 551, 78 So. 2d 580, 1955 Miss. LEXIS 409 (Miss. 1955).

Name of party defrauded must be set out in indictment for forgery as means of identifying offense charged and as protection against another prosecution for same offense. Hays v. State, 207 Miss. 748, 43 So. 2d 206, 1949 Miss. LEXIS 385 (Miss. 1949); Criddle v. State, 250 Miss. 328, 165 So. 2d 339, 1964 Miss. LEXIS 465 (Miss. 1964).

Indictment for forgery is defective but amendable when it fails to allege names of individual persons composing the partnership defrauded by forged instrument. Wilson v. State, 204 Miss. 111, 37 So. 2d 19, 1948 Miss. LEXIS 348 (Miss. 1948).

Amending indictment for uttering forgery by changing name of payee of check to conform to proof held not error. Graves v. State, 148 Miss. 62, 114 So. 123, 1927 Miss. LEXIS 9 (Miss. 1927).

An indictment under this section [Code 1942, § 2173] is valid when the language sufficiently informs of the nature and cause of the accusation. State v. Dotch, 126 Miss. 837, 89 So. 667, 1921 Miss. LEXIS 82 (Miss. 1921).

For indictment based upon alleged forged and counterfeited check, see State v. Ellis, 112 Miss. 503, 73 So. 565, 1916 Miss. LEXIS 136 (Miss. 1916).

In prosecution for forging school trustee's certificate, indictment must allege and proof must show persons whose names were forged were trustees of the school. Mississippi C. R. Co. v. Crawford, 96 Miss. 401, 51 So. 466, 1909 Miss. LEXIS 61 (Miss. 1909).

Where extrinsic facts are necessary to be known and considered along with the writing to constitute forgery an indictment therefore must set out such facts as well as the instrument itself. France v. State, 83 Miss. 281, 35 So. 313, 1903 Miss. LEXIS 41 (Miss. 1903).

4. Evidence.

Where defendant made a verbal confession to the charge of uttering forgery for changing a $ 65 check to a $ 650 check, the trial court did not err in denying his motion for a directed verdict. The complainant left a check for $ 65 to pay defendant for cleaning her house; defendant presented a check signed by the complainant to the bank teller for payment in the amount of $ 650. Berry v. State, 907 So. 2d 1011, 2005 Miss. App. LEXIS 289 (Miss. Ct. App.), cert. dismissed, 921 So. 2d 344, 2005 Miss. LEXIS 706 (Miss. 2005).

Unexplained or unsatisfactorily explained possession of a forged instrument by the defendant is prima facie evidence that he either committed the forgery himself or procured another to do so. Rowland v. State, 531 So. 2d 627, 1988 Miss. LEXIS 432 (Miss. 1988).

Evidence of uttering the forged check was properly admitted in defendant's prosecution for forgery where it tended to establish defendant's fraudulent intent and where the forgery and the uttering took place at the same time and thus were a part of the same transaction. Harrington v. State, 336 So. 2d 721, 1976 Miss. LEXIS 1514 (Miss. 1976).

In forgery prosecution when property is alleged to be that of named corporation and proof shows that such company is in fact a partnership, variance between indictment and proof is fatal and conviction will not be allowed to stand. Hays v. State, 207 Miss. 748, 43 So. 2d 206, 1949 Miss. LEXIS 385 (Miss. 1949).

To support conviction for forgery, it is necessary that fraudulent intent be proven as laid in indictment. Hays v. State, 207 Miss. 748, 43 So. 2d 206, 1949 Miss. LEXIS 385 (Miss. 1949); Criddle v. State, 250 Miss. 328, 165 So. 2d 339, 1964 Miss. LEXIS 465 (Miss. 1964).

In forgery prosecution when property is alleged in indictment to be that of named corporation there must be proof that such company is in fact corporation. Hays v. State, 207 Miss. 748, 43 So. 2d 206, 1949 Miss. LEXIS 385 (Miss. 1949); Criddle v. State, 250 Miss. 328, 165 So. 2d 339, 1964 Miss. LEXIS 465 (Miss. 1964).

Evidence held to sustain conviction for forgery of check. Hodgkin v. State, 172 Miss. 297, 160 So. 562, 1935 Miss. LEXIS 148 (Miss. 1935).

5. Instructions.

Instruction for state that if jury believes from evidence beyond every reasonable doubt that defendant is guilty as charged in indictment is prejudicially erroneous as it does not inform jury of elements of crime of forgery for which defendant was being tried. Wilson v. State, 204 Miss. 111, 37 So. 2d 19, 1948 Miss. LEXIS 348 (Miss. 1948).

In prosecution on bad check instruction failing to state that check must have been uttered "with intent to defraud" was erroneous. May v. State, 115 Miss. 708, 76 So. 636, 1917 Miss. LEXIS 254 (Miss. 1917).

6. Venue and Jurisdiction.

Venue of prosecution for uttering forged teacher's license held properly laid in county where license was mailed by accused, notwithstanding license was received in another county, where contract was consummated by correspondence originating in county from which license was mailed. Bradford v. State, 171 Miss. 8, 156 So. 655, 1934 Miss. LEXIS 200 (Miss. 1934).

RESEARCH REFERENCES

Am. Jur.

36 Am. Jur. 2d, Forgery § 34.

2 Am. Jur. Trials, Investigating Particular Crimes §§ 23-31 (forgery).

CJS.

37 C.J.S., Forgery § 26.

§ 97-21-37. Possession of counterfeit bank notes or other instrument with intention to utter.

Every person who shall have in his possession any forged, altered or counterfeited negotiable note, bill, draft, or other evidence of debt issued or purported to have been issued by any corporation or company duly authorized for that purpose by the laws of the United States or of this state, or of any other state, government, or country, or any other forged, altered, or counterfeit, instrument the forgery of which is declared by the provisions of this chapter to be punishable, knowing the same to be forged, altered, or counterfeited, with intention to utter the same as true or as false, or to cause the same to be uttered, with intent to injure or defraud, shall be guilty of forgery and shall be punished according to the schedule in Section 97-21-33.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 4(36); 1857, ch. 64, art. 120; 1871, § 2584; 1880, § 2830; 1892, § 1109; 1906, § 1190; Hemingway's 1917, § 920; 1930, § 947; 1942, § 2176; Laws, 2014, ch. 457, § 26, eff from and after July 1, 2014.

Cross References — Unauthorized signature on commercial paper, see §§ 75-3-404 through 75-3-406.

Alteration of commercial paper, see §§ 75-3-406, 75-3-407.

Nature and sufficiency of intent to defraud, see § 97-21-27.

Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see § 97-43-1 et seq.

Enhancement of penalty for violation of provisions of this section under certain circumstances, see § 99-19-401.

RESEARCH REFERENCES

Am. Jur.

20 Am. Jur. 2d, Counterfeiting §§ 1 et seq.

2 Am. Jur. Trials, Investigating Particular Crimes §§ 23-31 (forgery).

CJS.

20 C.J.S., Counterfeiting §§ 7-9.

§ 97-21-39. Railroad tickets; definition.

The words "railroad passenger ticket," as used in Sections 97-21-41 and 97-21-43, shall be construed to embrace any ticket, card, pass, certificate, or paper, providing or intending to provide for the carriage or transportation of any person or persons upon any railroad, and shall include not only such tickets fully prepared for use, but those not so fully prepared, and all others which have been once used.

HISTORY: Codes, 1892, § 1102; 1906, § 1183; Hemingway's 1917, § 913; 1930, § 940; Laws, 1942, § 2169.

§ 97-21-41. Railroad tickets; making or altering.

Every person who shall falsely make, forge, or counterfeit any railroad passenger ticket, purporting to be made or issued by any railroad company or companies, with intent to injure or defraud, or who shall, with like intent, alter any railroad passenger ticket made or issued by any railroad company or companies, shall be guilty of forgery.

HISTORY: Codes, 1892, § 1100; 1906, § 1181; Hemingway's 1917, § 911; 1930, § 938; 1942, § 2167.

Cross References — Robbery of railroad tickets, see § 97-3-83.

Nature and sufficiency of intent to defraud, see § 97-21-27.

Penalty for forgery, see § 97-21-33.

Meaning of "railroad passenger ticket," see § 97-21-39.

Embezzlement of railroad tickets, see § 97-25-9.

Theft of railroad tickets, see § 97-25-11.

RESEARCH REFERENCES

Am. Jur.	**CJS.**
36 Am. Jur. 2d, Forgery § 33.	20 C.J.S., Counterfeiting §§ 1 et seq.

§ 97-21-43. Railroad tickets; possession of forged or altered tickets.

Every person who shall sell or offer to sell, or who shall have in his possession with intent to sell, any such false, forged, altered or counterfeit railroad passenger ticket, knowing the same to be false, forged, altered, or counterfeit, shall be guilty of forgery.

HISTORY: Codes, 1892, § 1101; 1906, § 1182; Hemingway's 1917, § 912; 1930, § 939; 1942, § 2168.

Cross References — Penalty for forgery, see § 97-21-33.
Meaning of "railroad passenger ticket," see § 97-21-39.
Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see § 97-43-1 et seq.

RESEARCH REFERENCES

Am. Jur.	**CJS.**
36 Am. Jur. 2d, Forgery §§ 31, 32.	20 C.J.S., Counterfeiting §§ 7-9.

§ 97-21-45. Record of will or other instrument constituting evidence, judgment or decree of court, or return on process.

Every person who, with intent to defraud, shall falsely alter, destroy, corrupt, or falsify the record of any will, conveyance or other instrument the record of which shall by law be evidence, or any record or any judgment or decree of a court of record, or the enrollment of any such judgment or decree, or the return of an officer, court, or tribunal, to any process of any court, or who shall falsely make, forge, or alter any entry in any book of record, or any instrument purporting to be any such record or return, with intent to defraud, shall, upon conviction, be guilty of forgery.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 4(25); 1857, ch. 64, art. 110; 1871, § 2574; 1880, § 2820; 1892, § 1096; 1906, § 1177; Hemingway's 1917, § 907; 1930, § 934; 1942, § 2163.

Cross References — Recording of instruments, see §§ 89-5-1 et seq.
Recording of wills, see §§ 91-7-31, 91-7-33.
Alteration, destruction, and secretion of wills, see § 97-9-77.
Nature and sufficiency of intent to defraud, see § 97-21-27.
Penalty for forgery, see § 97-21-33.
Forgery of will, deed, acknowledgment, etc., see § 97-21-63.
Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see § 97-43-1 et seq.

JUDICIAL DECISIONS

1. In general.

To convict of falsifying a public record by entering a deed of trust record, it must be averred and proved that the chancery clerk attested the entry. Poythress v. State, 99 Miss. 805, 56 So. 168, 1911 Miss. LEXIS 254 (Miss. 1911).

RESEARCH REFERENCES

ALR.

What constitutes a public record or document within statute making falsification, forgery, mutilation, removal, or other misuse thereof an offense. 69 A.L.R.2d 1095.

Am. Jur.

36 Am. Jur. 2d, Forgery §§ 1-3.

66 Am. Jur. 2d, Records and Recording Laws §§ 12, 13.

CJS.

37 C.J.S., Forgery §§ 1 et seq.

§ 97-21-47. Seal of state and other government and corporate seals or their impressions.

Every person who shall forge or counterfeit the great seal of this state, the seal of any public office or officer authorized by law, the seal of any court of record, the seal of any county, city, town or village, or the seal of any body-corporate, duly incorporated, or who shall falsely make, forge, or counterfeit any impression purporting to be the impression of any such seal, with intent to defraud, shall be guilty of forgery.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 4(24); 1857, ch. 64, art. 109; 1871, § 2573; 1880, § 2819; 1892, § 1095; 1906, § 1176; Hemingway's 1917, § 906; 1930, § 933; 1942, § 2162.

Cross References — Great seal of state of Mississippi, see Miss Const Art. 5, § 126.
Governor's use of great seal, see § 7-1-9.
Nature and sufficiency of intent to defraud, see § 97-21-27.
Penalty for forgery, see § 97-21-33.
Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see § 97-43-1 et seq.

RESEARCH REFERENCES

Am. Jur.

36 Am. Jur. 2d, Forgery §§ 26 et seq.

CJS.

37 C.J.S., Forgery §§ 1 et seq.

§ 97-21-49. Selling or offering to sell counterfeit notes or other evidence of debt, etc.

Every person who shall be convicted of having sold, exchanged, or delivered, for any consideration, any forged or counterfeited promissory note, check, bill, draft or other evidence of debt, or engagement for the payment of money, absolutely, or upon contingency, knowing the same to be forged or counterfeited, with the intent to have the same uttered or passed; or of having offered any such notes or other instruments for sale, exchange, or delivery, for any consideration, with the like knowledge and with the like intention, shall be guilty of forgery.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 4(32); 1857, ch. 64, art. 116; 1871, § 2580; 1880, § 2826; 1892, § 1105; 1906, § 1186; Hemingway's 1917, § 916; 1930, § 943; 1942, § 2172.

Cross References — Penalty for forgery, see § 97-21-33.

Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see § 97-43-1 et seq.

Enhancement of penalty for violation of provisions of this section under certain circumstances, see § 99-19-401.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Indictment.
3. —Variance between indictment and proof.
4. Sentencing Considerations.

1. In general.

A 14-year sentence for forging and publishing a $40 check, a 2-year consecutive sentence for forging a $50 check, and 2 14-year sentences for forging and publishing checks in the amounts of $54 and $62, though severe, were not so "grossly disproportionate" as to violate the Eighth Amendment to the United States Constitution. Wallace v. State, 607 So. 2d 1184, 1992 Miss. LEXIS 586 (Miss. 1992).

Trial court did not abuse its discretion in excluding for cause a potential juror who was a double first cousin to a defendant charged with uttering a forgery, and with whom defendant had discussed the case prior to trial, despite the juror's testimony that she could still be fair and impartial. Burt v. State, 493 So. 2d 1325, 1986 Miss. LEXIS 2490 (Miss. 1986).

In absence of anything in the record that suggests that a defendant charged with uttering a forgery was prejudiced to the point of warranting a new trial by the failure to furnish him with a handwriting expert, the trial court did not err in refusing defendant's request for the expert. Burt v. State, 493 So. 2d 1325, 1986 Miss. LEXIS 2490 (Miss. 1986).

At trial for uttering a forgery, the trial court did err in allowing into evidence a bank check containing disputed writing before the writing was authenticated, where the check was not shown to the jury until the writing was authenticated. Burt v. State, 493 So. 2d 1325, 1986 Miss. LEXIS 2490 (Miss. 1986).

Determining the voluntariness of a confession at trial of charge of uttering forged instrument is a function of the trial judge, and, where the evidence is conflicting, the Supreme Court must respect the trial judge's finding. Kelly v. State, 493 So. 2d 984, 1986 Miss. LEXIS 2635 (Miss. 1986).

Store owner's in court identification of defendant as person who uttered bad check is not impermissibly tainted by unnecessarily suggestive pretrial lineup where in court identification is based upon owner's observation of defendant in store and not upon pretrial lineup. Tobias v. State, 472 So. 2d 398, 1985 Miss. LEXIS 2137 (Miss. 1985).

Evidence that defendant charged with uttering forged check had uttered forged check on prior occasion is not admissible for purpose of impeaching defendant's denial of having previously written check to store at which forged check was cashed. Tobias v. State, 472 So. 2d 398, 1985 Miss. LEXIS 2137 (Miss. 1985).

Testimony of witnesses who positively identify defendant as person who passed bad check on particular date is sufficient to allow jury to convict defendant notwithstanding testimony of defense witness that defendant was in another county entire day. Donald v. State, 472 So. 2d 370, 1985 Miss. LEXIS 2139 (Miss. 1985).

Evidence of forged checks uttered by defendant other than check upon which check forgery prosecution is based is inadmissible as proof of identity where defendant is regular customer of bank to which check is issued and is remembered by tellers. Donald v. State, 472 So. 2d 370, 1985 Miss. LEXIS 2139 (Miss. 1985).

A sentence of nine years in the penitentiary upon a conviction of forgery involving a $43 check, was excessive where the evidence supporting the conviction was weak at best. Crapps v. State, 221 So. 2d 722, 1969 Miss. LEXIS 1505 (Miss. 1969).

Testimony showing possession of suitable tools for making counterfeit coin is inadmissible on the charge of uttering the coin. Burgess v. State, 81 Miss. 482, 33 So. 499, 1902 Miss. LEXIS 193 (Miss. 1902).

2. Indictment.

In a prosecution for forgery of a check wherein the defendant had moved to quash the indictment based upon former §§ 97-23-63 and 97-23-67 on the ground that the check bearing a notation "for painting" had been a written contract and therefore void because it had been made on a Sunday, the trial court did not err in denying the motion where the Sunday-dated check had been cashable and had therefore possessed sufficient legal efficacy to create a liability and where the intent of the "Blue Laws" had never been to make the crime of forgery lawful if perpetrated on Sunday. Harper v. State, 394 So. 2d 311, 1981 Miss. LEXIS 1934 (Miss. 1981).

Under an indictment for forgery of a written order for four sacks of rye, where the allegations of the indictment were that the writing involved was capable of effecting a fraud, and was altered with a fraudulent intent, the accused's demurrer to indictment based on the contention that the writing in question was not susceptible of forgery, was properly overruled. Dunson v. State, 223 Miss. 551, 78 So. 2d 580, 1955 Miss. LEXIS 409 (Miss. 1955).

Under this section [Code 1942, § 2172] the indictment should allege extrinsic fact showing how the writings could have been used as evidences of debt or engagements for the payment of money. Cohran v. State, 219 Miss. 767, 70 So. 2d 46, 1954 Miss. LEXIS 384 (Miss. 1954).

3. —Variance between indictment and proof.

Amendment to an indictment, after state had closed its case in an uttering a forgery trial, to show that a named person was a part owner, instead of agent, of store which had received check, was one of form, not of substance, and would not support defendant's motion for a directed verdict. Burt v. State, 493 So. 2d 1325, 1986 Miss. LEXIS 2490 (Miss. 1986).

In a forgery prosecution, the fact that the indictment charged that the defendant had intended to defraud certain persons doing business at a store, by the cashing of a forged check, while a witness on cross-examination remarked that the business was a corporation, did not constitute a material variance, for there was not even a remote chance that such inconsistency could result in subjecting the defendant to another prosecution. Smith v. State, 222 So. 2d 688, 1969 Miss. LEXIS 1550 (Miss. 1969).

Variance is fatal where evidence showed different check from that described in indictment. Bradley v. State, 128 Miss. 114, 90 So. 627, 1921 Miss. LEXIS 304 (Miss. 1921).

4. Sentencing Considerations.

Court had the right to revoke petitioner's suspended sentence for uttering forgery because he tested positive for marijuana and was terminated from a work program. He was not entitled to postconviction relief, because he had signed a waiver of his right to a probation revocation hearing. Gates v. State, 919 So. 2d 170, 2005 Miss. App. LEXIS 375 (Miss. Ct. App. 2005).

Court did not improperly rely on evidence of a prior criminal conviction to justify the length of the sentence in defendant's forgery case where defendant had two prior felony convictions, a pending charge of possession of paraphernalia, and numerous arrests. Swindle v. State, 881 So. 2d 174, 2004 Miss. LEXIS 713 (Miss. 2004).

RESEARCH REFERENCES

ALR.
What constitutes uttering and passing counterfeit obligation or other security of the United States, with intent to defraud, under 18 USC § 472. 3 A.L.R.3d 1051.

Am. Jur.
20 Am. Jur. 2d, Counterfeiting §§ 1 et seq.

36 Am. Jur. 2d, Forgery §§ 24, 25.

2 Am. Jur. Trials, Investigating Particular Crimes §§ 23-31 (forgery).

§ 97-21-51. Unauthorized use or signing of another's name to telegram, petition or related communication.

If any person shall wilfully and falsely, or fraudulently forge, sign, or otherwise use the name of another person to a telegram, petition or related communication or instrument of writing with intent to deceive, defraud, or for personal gain or benefit, or for the benefit of another person, without the express written approval of such person, he shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment in the county jail for not more than 90 days and by a fine of not more than $500.00, or both in the discretion of the court.

HISTORY: Codes, 1942, § 2187.5; Laws, 1962, ch. 316, eff from and after passage (approved May 16, 1962).

Cross References — Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see § 97-43-1 et seq.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

Enhancement of penalty for violation of provisions of this section under certain circumstances, see § 99-19-401.

RESEARCH REFERENCES

ALR.
Forgery: use of fictitious or assumed name. 49 A.L.R.2d 852.

Am. Jur.
36 Am. Jur. 2d, Forgery §§ 29, 33.

2 Am. Jur. Trials, Investigating Particular Crimes §§ 23-31 (forgery).

§ 97-21-53. Trade-marks; counterfeiting and forging of.

(1) Every person who shall knowingly and willfully forge or counterfeit, or cause or procure to be forged or counterfeited, any representation, likeness, similitude, copy, or imitation of the private stamp, wrappers, or labels usually fixed by any mechanic or manufacturer to, and used by such mechanic or manufacturer on, in, or about the sale of any goods, wares, or merchandise whatsoever, shall be punished as follows:

(a) If the goods or services to which the forged or counterfeit representation, likeness, similitude, copy of imitation of the private stamp, wrappers or labels are attached or affixed, or in connection with which they are used, or to which the offender intended they be attached or affixed, or in connection with which the offender intended they be used, have, in the aggregate, a retail value of the goods if they were not forged or counterfeited of One Thousand Dollars ($1,000.00), or more, the person shall be guilty of a felony and, upon conviction, may be imprisoned for up to five (5) years and fined up to Ten Thousand Dollars ($10,000.00); or

(b) If the goods or services to which the forged or counterfeit representation, likeness, similitude, copy, or imitation of the private stamp, wrappers, or labels are attached or affixed, or in connection with which they are used, or to which the offender intended they be attached or affixed, or in connection with which the offender intended they be used, have, in the aggregate, a retail value of less than One Thousand Dollars ($1,000.00), the person shall be guilty of a misdemeanor and, upon conviction, may be imprisoned for up to one (1) year and fined up to Five Thousand Dollars ($5,000.00).

(2) Property used in any way to violate the provisions of this section shall be subject to forfeiture under Sections 97-21-101 and 97-21-103.

HISTORY: Codes, 1857, ch. 64, art. 131; 1871, § 2595; 1880, § 2841; 1892, § 1306; 1906, § 1380; Hemingway's 1917, § 1123; 1930, § 1153; 1942, § 2390; Laws, 2009, ch. 378, § 1; Laws, 2011, ch. 346, § 3, eff from and after July 1, 2011.

Cross References — Registration of trademarks and labels, see § 75-25-1 et seq.

Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see § 97-43-1 et seq.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

Enhancement of penalty for violation of provisions of this section under certain circumstances, see § 99-19-401.

RESEARCH REFERENCES

ALR.

Validity and construction of state statutes penalizing "criminal simulation" of goods or merchandise. 72 A.L.R.4th 1071.

Am. Jur.

20 Am. Jur. 2d, Counterfeiting §§ 1 et seq.

36 Am. Jur. 2d, Forgery §§ 1-3.

§ 97-21-55. Trade-marks; possession of dies, plates, printed label or any imitation for purpose of vending imitation goods.

(1) Every person who shall have in his possession any die, plate, engraving, or printed label, stamp, or wrapper, or any representation, likeness, similitude, copy, or imitation of the private stamp, wrapper, or label usually fixed by any mechanic or manufacturer to, and used by such mechanic or manufacturer on, in, or about the sale of any goods, wares, or merchandise, with intent to use or sell the said die, plate or engraving, or printed stamp, label, or wrapper, for the purpose of aiding or assisting, in any way whatever,

in vending any goods, wares, or merchandise in imitation of, or intended to resemble and be sold for the goods, wares, or merchandise of such mechanic or manufacturer, shall be guilty of a felony, and, upon conviction, be punished by imprisonment for not more than five (5) years and a fine of Ten Thousand Dollars ($10,000.00).

(2) Property used in any way to violate the provisions of this section shall be subject to forfeiture under Sections 97-21-101 and 97-21-103.

HISTORY: Codes, 1857, ch. 64, art. 132; 1871, § 2596; 1880, § 2842; 1892, § 1307; 1906, § 1381; Hemingway's 1917, § 1124; 1930, § 1154; 1942, § 2391; Laws, 2009, ch. 378, § 2; Laws, 2011, ch. 346, § 4, eff from and after July 1, 2011.

Cross References — Registration of trademarks and labels, see § 75-25-1 et seq.

Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see § 97-43-1 et seq.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

Enhancement of penalty for violation of provisions of this section under certain circumstances, see § 99-19-401.

RESEARCH REFERENCES

ALR.

Validity and construction of state statutes penalizing "criminal simulation" of goods or merchandise. 72 A.L.R.4th 1071.

Am. Jur.

20 Am. Jur. 2d, Counterfeiting §§ 1 et seq.

36 Am. Jur. 2d, Forgery §§ 1-3.

§ 97-21-57. Trade-marks; sale of goods bearing counterfeit stamp or label.

(1) Every person who shall sell, vend, or possess with intent to sell or vend any goods, wares, or merchandise having thereon any forged or counterfeit stamp or label, imitating, resembling, or purporting to be the stamp or label of any mechanic or manufacturer, knowing the same to be forged or counterfeited, and resembling or purporting to be imitations of the stamps or labels of such mechanic or manufacturer shall be punished as follows:

(a) If the goods or services to which the forged or counterfeit representation, likeness, similitude, copy, or imitation of the private stamp, wrappers, or labels are attached or affixed, or in connection with which they are used, or to which the offender intended they be attached or affixed, or in connection with which the offender intended they be used, have, in the aggregate, a retail value of the goods if they were not forged or counterfeited of One Thousand Dollars ($1,000.00), or more, the person shall be guilty of a felony and, upon conviction, may be imprisoned for up to five (5) years and fined up to Ten Thousand Dollars ($10,000.00); or

(b) If the goods or services to which the forged or counterfeit representation, likeness, similitude, copy, or imitation of the private stamp, wrappers, or labels are attached or affixed, or in connection with which they are used, or to which the offender intended they be attached or affixed, or in connection with which the offender intended they be used, have, in the aggregate, a retail value of the goods if they were not forged or counterfeited of less than One Thousand Dollars ($1,000.00), the person shall be guilty of a misdemeanor and, upon conviction, may be imprisoned for up to one (1) year and fined up to Five Thousand Dollars ($5,000.00).

(2) Property used in any way to violate the provisions of this section shall be subject to forfeiture under Sections 97-21-101 and 97-21-103.

HISTORY: Codes, 1857, ch. 64, art. 133; 1871, § 2597; 1880, § 2843; 1892, § 1308; 1906, § 1382; Hemingway's 1917, § 1125; 1930, § 1155; 1942, § 2392; Laws, 2009, ch. 378, § 3; Laws, 2011, ch. 346, § 5; Laws, 2012, ch. 389, § 1, eff from and after July 1, 2012.

Cross References — Registration of trademarks and labels, see § 75-25-1 et seq.

Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see § 97-43-1 et seq.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

ALR.

Validity and construction of state statutes penalizing "criminal simulation" of goods or merchandise. 72 A.L.R.4th 1071.

Am. Jur.

20 Am. Jur. 2d, Counterfeiting §§ 1 et seq.

36 Am. Jur. 2d, Forgery §§ 1-3.

§ 97-21-59. Uttering counterfeit instrument or coin.

Every person who shall be convicted of having uttered or published as true, and with intent to defraud, any forged, altered, or counterfeit instrument, or any counterfeit gold or silver coin, the forgery, altering, or counterfeiting of which is declared by the provisions of this chapter to be an offense, knowing such instrument or coin to be forged, altered, or counterfeited, shall suffer the punishment herein provided for forgery, pursuant to Section 97-21-33.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 4(39); 1857, ch. 64, art. 122; 1871, § 2586; 1880, § 2832; 1892, § 1111; 1906, § 1192; Hemingway's 1917, § 922; 1930, § 949; 1942, § 2179; Laws, 2014, ch. 457, § 27, eff from and after July 1, 2014.

Cross References — Nature and sufficiency of intent to defraud, see § 97-21-27.

Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see § 97-43-1 et seq.

Organized theft or fraud enterprise applicable to conduct proscribed in this section, see § 97-43-3.1.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Indictment.
3. Evidence.
4. Instructions.
5. Sentencing considerations.

1. In general.

Denial of the prisoner's postconviction relief motion without an evidentiary hearing was proper where the appellate court found there was no defect in the factual basis for the prisoner's guilty plea to uttering a forgery, as the prisoner understood the charge and also signed a petition to enter a guilty plea, agreeing that the attorney had explained the charges. Moore v. State, 830 So. 2d 1274, 2002 Miss. App. LEXIS 640 (Miss. Ct. App. 2002).

Sentencing defendant to 15 years without possibility of parole, the maximum penalty for forgery, upon conviction for uttering a $35 forged check, was not unconstitutionally disproportionate in violation of Federal Constitution's Eighth Amendment's cruel and unusual punishment clause, where sentence was imposed under habitual offender statute and defendant's 2 prior burglary convictions were not "truly non-violent" offenses; court noted that defendant's sentence was for 15 years, not life. Burt v. Puckett, 933 F.2d 350, 1991 U.S. App. LEXIS 12195 (5th Cir. Miss. 1991).

A 15-year sentence without hope of parole, imposed upon a defendant as a habitual offender, for uttering a forged check in the amount of $500, did not constitute cruel and unusual punishment. Barnwell v. State, 567 So. 2d 215, 1990 Miss. LEXIS 467 (Miss. 1990).

An accused, who wrongfully obtained possession of a check and, after forging on the back of the check the name of the payee, exhibited the same to a corporation, representing it to be a genuine instrument, and obtained the face value thereof, was guilty of the crime of uttering and publishing a forged check knowing it to be forged. Osby v. State, 229 Miss. 660, 91 So. 2d 748, 1957 Miss. LEXIS 311 (Miss. 1957).

To constitute offense of uttering forged instrument, bill, or coin, knowledge of forgery on part of accused is necessary. Keyes v. State, 166 Miss. 316, 148 So. 361, 1933 Miss. LEXIS 386 (Miss. 1933).

2. Indictment.

An indictment charging forgery was sufficient where it contained all of the elements necessary to charge the offense. Veal v. State, 357 So. 2d 943, 1978 Miss. LEXIS 2522 (Miss. 1978).

A defendant who was shown by testimony to have induced another to forge the name of the payee on a check, was not entitled to acquittal of the forgery charged in the indictment on the theory that the indictment did not inform the defendant that he was being tried as an accessory before the fact of forgery, since, as an accessory before the fact, the defendant was considered a principal under Code 1942, § 1995. Ellis v. State, 255 So. 2d 325, 1971 Miss. LEXIS 1289 (Miss. 1971).

A conviction on an indictment charging the defendant with the crime of uttering and publishing as true a forged check, knowing the instrument to be forged, was not sustained by proof that he was found in possession of a check upon which an indorsement had been forged. Cogsdell v. State, 183 Miss. 826, 185 So. 206, 1938 Miss. LEXIS 296 (Miss. 1938).

3. Evidence.

Evidence supported defendant's conviction of uttering forgery because (1) the checks presented to a check cashing business were in defendant's prior possession; (2) defendant admitted to knowledge and involvement in a check-cashing scheme; and (3) there was no record of an account at a bank belonging to the business that issued the check which defendant actually cashed, and no evidence that the company even existed. Jones v. State, 130 So. 3d 519, 2013 Miss. App. LEXIS 199 (Miss. Ct. App. 2013), cert. denied, 131 So. 3d 577, 2014 Miss. LEXIS 65 (Miss. 2014).

Where defendant testified that an employee gave him fifty dollars to cash a payroll check because the employee did not have the appropriate identification to cash the check, defendant's conviction for uttering a forgery was supported by sufficient evidence because an employer testified that he did not authorize anyone to write the check to defendant and defendant's testimony that he empathized with the employee's situation and that he went to talk to the employer after hearing that the check was stolen did not sufficiently demonstrate defendant's lack of guilty knowledge and criminal intent. McGlasten v. State, 109 So. 3d 620, 2013 Miss. App. LEXIS 110 (Miss. Ct. App. 2013).

Defendant's convictions for uttering a forgery under Miss. Code Ann. § 97-21-1 and for conspiracy under Miss. Code Ann. § 97-1-1 were affirmed because there was sufficient evidence for the jury to find that defendant possessed the forged checks and attempted to pass these checks off as true and although the co-conspirator was an admitted drug addict, his testimony was not self-contradictory or thoroughly impeached. Nelson v. State, 32 So. 3d 534, 2009 Miss. App. LEXIS 601 (Miss. Ct. App. 2009), cert. denied, 31 So. 3d 1217, 2010 Miss. LEXIS 186 (Miss. 2010).

Motion for post-conviction relief was denied in a case where defendant pled guilty to uttering a forgery because a claim that the charge should have been for false pretenses instead was procedurally barred under Miss. Code Ann. § 99-39-21(1) since the issue was not raised in the plea; despite the bar, the issue was meritless because defendant admitted in the plea colloquy that she knowingly created a fictitious name for use on a bank account and presented a check drawn on that account for payment at a retail store. Tate v. State, 961 So. 2d 763, 2007 Miss. App. LEXIS 463 (Miss. Ct. App. 2007).

Evidence was sufficient to sustain defendant's conviction for forgery; a convenience store clerk testified that defendant presented a check at the convenience store for cashing. The check was not issued in the ordinary course of business; the evidence, taken in its entirety, showed that defendant knew that the check was forged. Duhart v. State, 927 So. 2d 768, 2006 Miss. App. LEXIS 74 (Miss. Ct. App. 2006).

Defendant's motion for a peremptory instruction and a judgment notwithstanding the verdict was properly denied by the trial court where considering the strength of all inferences and circumstances of possession by defendant of the victim's check, together with his attempt to negotiate the check at the bank, the jury was fully warranted in concluding that defendant was guilty of uttering a forged instrument and petit larceny. Miles v. State, 864 So. 2d 963, 2003 Miss. App. LEXIS 1039 (Miss. Ct. App. 2003).

State succeeded in proving all of the elements of the crime of uttering a forgery where there was no dispute that the check presented at the bank for deposit was in defendant's possession prior to being presented and defendant did not offer evidence that there was another person who allegedly presented the check to defendant in exchange for an automobile; defendant presented nothing to explain satisfactorily his possession of the forgery. Cannady v. State, 855 So. 2d 1000, 2003 Miss. App. LEXIS 157 (Miss. Ct. App.), cert. denied, 859 So. 2d 1017, 2003 Miss. LEXIS 496 (Miss. 2003).

Evidence was sufficient to support a conviction where (1) the defendant claimed that he was only helping a young man by picking up things the young man had dropped, but (2) all of the witnesses for the state testified it was in fact the defendant who stood at the customer service counter and offered a check to be cashed, (3) none of the witnesses for the state testified that there was any young man there at all, and (4) the state, in addition, put on evidence that the defendant asked for the check to be cashed, that he provided false identification when asked for it, and that he even endorsed the check in the plain sight of the store owner. Wiseman v. State, 771 So. 2d 977, 2000 Miss. App. LEXIS 433 (Miss. Ct. App. 2000).

In a forgery prosecution, a witness' reviewing of a photograph of the forgery suspect taken by a store security system at the time that the suspect cashed the forged check did not impermissibly taint the witness' in-court identification of the defendant so as to render it inadmissible. Such photographs may properly be used to refresh the recollection of an eyewitness since they show the person who actually committed the crime as opposed to some possible suspect in the police files. George v. State, 521 So. 2d 1287, 1988 Miss. LEXIS 107 (Miss. 1988).

Evidence that the signee is a fictitious person is admissible to show that the instrument is a forgery. Sanders v. State, 219 So. 2d 913, 1969 Miss. LEXIS 1429 (Miss.), cert. denied, 396 U.S. 913, 90 S. Ct. 228, 24 L. Ed. 2d 188, 1969 U.S. LEXIS 514 (U.S. 1969).

Where an indictment, charging the accused with the crime of uttering and publishing a forged check, knowing it to be forged, alleged that the check was cashed by a corporation, it was not reversible error to permit the cashier of the company to testify orally that the company was a corporation. Osby v. State, 229 Miss. 660, 91 So. 2d 748, 1957 Miss. LEXIS 311 (Miss. 1957).

In prosecution for crime of uttering and publishing as true, with intent to defraud, a forged and counterfeit check, knowing such instrument to be forged, evidence that a name signed to an instrument is that of a fictitious person is admissible to prove that the instrument is a forgery. Coward v. State, 223 Miss. 538, 78 So. 2d 605, 1955 Miss. LEXIS 408 (Miss. 1955).

In a prosecution for the crime of uttering and publishing as true, with intent to defraud, a forged and counterfeit check, knowing such an instrument to be forged, evidence by persons so situated that they would probably know the signer if she existed is admissible and they may testify that they did not know of any such person. Coward v. State, 223 Miss. 538, 78 So. 2d 605, 1955 Miss. LEXIS 408 (Miss. 1955).

Knowledge on part of accused that bill uttered by him was forged may be supplied by circumstantial evidence. Keyes v. State, 166 Miss. 316, 148 So. 361, 1933 Miss. LEXIS 386 (Miss. 1933).

Evidence held insufficient to support conviction under indictment charging uttering of United States government note which had been raised or altered. Keyes v. State, 166 Miss. 316, 148 So. 361, 1933 Miss. LEXIS 386 (Miss. 1933).

4. Instructions.

An instruction for the prosecution, granted in a trial of an indictment under Code 1942, § 2179, which stated the elements of the offense in the alternative that the defendant either knew, or had reasonable reason to believe, that he was uttering a forged instrument would ordinarily be fatally defective, for the language of the section requires that the person uttering the instrument must know it to be forged; but such defect may be cured by properly phrased instructions granted on behalf of the defendant. Pierce v. State, 213 So. 2d 769, 1968 Miss. LEXIS 1294 (Miss. 1968).

5. Sentencing considerations.

Motion for post-conviction relief was properly dismissed based on an allegation of ineffective assistance of counsel because defendant was correctly informed of the 10-year maximum penalty for uttering forgery; however, the case was remanded for resentencing because plain error was committed when a trial court improperly imposed a 15-year sentence. Jefferson v. State, 958 So. 2d 1276, 2007 Miss. App. LEXIS 440 (Miss. Ct. App. 2007).

Because defendant did not receive a suspended sentence, his sentence was not illegal under Miss. Code Ann. § 47-7-33(1) (Rev. 2004), and therefore his petition for post-conviction relief was properly dismissed as untimely, as it was not filed until March 2005; under Miss. Code Ann. § 99-39-5(2), defendant only had until June 5, 2003, to file his motion for post-conviction relief, and two years' incarceration plus one year of supervision did not exceed 15 years, the maximum sentence for uttering a forgery. King v. State, 929 So. 2d 373, 2006 Miss. App. LEXIS 380 (Miss. Ct. App. 2006).

Court did not improperly rely on evidence of a prior criminal conviction to justify the length of the sentence in defendant's forgery case where defendant had two prior felony convictions, a pending charge of possession of paraphernalia, and numerous arrests. Swindle v. State, 881 So. 2d 174, 2004 Miss. LEXIS 713 (Miss. 2004).

RESEARCH REFERENCES

ALR.

Forgery: use of fictitious or assumed name. 49 A.L.R.2d 852.

Falsifying of money order as forgery. 65 A.L.R.3d 1307.

Am. Jur.

20 Am. Jur. 2d, Counterfeiting §§ 4, 5.

36 Am. Jur. 2d, Forgery §§ 24, 25.

CJS.

20 C.J.S., Counterfeiting §§ 9, 10.

§ 97-21-61. Warrants on state treasury, United States treasury, or county, city, town or village treasury.

If any person shall falsely or fraudulently make, forge, or alter any writing, being, or pretending to be, an auditor's warrant on the state treasury, or any order or warrant on the treasury of this state or the treasury of the United States, or of any county, or of any city, town, or village, with intent to defraud the state, the United States, or any county, city, village, or town, or any person, he shall be guilty of forgery.

HISTORY: Codes, 1857, ch. 64, art. 130; 1871, § 2594; 1880, § 2839; 1892, § 1118; 1906, § 1199; Hemingway's 1917, § 929; 1930, § 956; 1942, § 2186.

Editor's Notes — Section 7-7-2, as added by Laws of 1984, chapter 488, § 90, and amended by Laws of 1985, chapter 455, § 14, Laws of 1986, chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor," and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws of 1989, chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws of 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Warrants by State Fiscal Officer, see § 7-7-15.

Requirement of warrant for receipts or payments by state treasurer, see § 7-9-13.

Issuance of county bonds and notes, see §§ 19-9-1 et seq.

Issuance of municipal warrants, see § 21-39-13.

Nature and sufficiency of intent to defraud, see § 97-21-27.

Penalty for forgery, see § 97-21-33.

Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see § 97-43-1 et seq.

RESEARCH REFERENCES

Am. Jur.
36 Am. Jur. 2d, Forgery § 34.

CJS.
20 C.J.S., Counterfeiting §§ 1 et seq.

§ 97-21-63. Will, deed, certificate of acknowledgment or proof of recordable instrument.

Every person who shall be convicted of having forged, counterfeited, or falsely altered any will of real or personal property, or any deed or other instrument, being or purporting to be the act of another by which any right or interest in real or personal property shall be or purport to be transferred, conveyed, or in any way changed or affected; or any certificate or indorsement of the acknowledgment of any person of any deed or other instrument which by law may be recorded, made or purporting to have been made by any officer duly authorized to make such certificate or indorsement; or any certificate of the proof of any deed or other instrument which by law may be recorded, made or purporting to have been made by any officer duly authorized to make such certificate, with intent to defraud, shall be guilty of forgery.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 4(22); 1857, ch. 64, art. 107; 1871, § 2571; 1880, § 2817; 1892, § 1093; 1906, § 1174; Hemingway's 1917, § 904; 1930, § 931; 1942, § 2160.

Cross References — Before whom oaths may be taken, see § 11-1-1.

Notaries public, see §§ 25-33-1 et seq.

Land and conveyances, see §§ 89-1-1 et seq.

Acknowledgments, see §§ 89-3-1 et seq.

Wills and testaments, see §§ 91-5-1 et seq.

Executors and administrators, see §§ 91-7-1 et seq.

Testing validity of will within two years, see § 91-7-23.

Credit card forgery, see § 97-19-17.

False certification of acknowledgment or proof of deed or other recordable instrument, see § 97-21-7.

Nature and sufficiency of intent to defraud, see § 97-21-27.

Penalty for forgery, see § 97-21-33.

Falsification of record of will, conveyance, etc., see § 97-21-45.

Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see § 97-43-1 et seq.

JUDICIAL DECISIONS

1. In general.

The enactment of Code 1942, § 2148.5, dealing specifically with fraudulent use of credit cards does not pre-empt the field and does not preclude prosecution under the general forgery statute of a defendant charged with using a stolen credit card to obtain goods and signing the credit card owner's name to the credit card slip or invoice. McCrory v. State, 210 So. 2d 877, 1968 Miss. LEXIS 1528 (Miss. 1968).

To constitute "forgery," there must be false making or alteration of written instrument and fraudulent intent, and instrument must be apparently capable of effecting fraud. State v. Ellis, 161 Miss. 361, 137 So. 102, 1931 Miss. LEXIS 267 (Miss. 1931).

Deed not under seal purporting to have been executed prior to the abolishment of private seals was a proper subject of forgery. State v. Saucier, 102 Miss. 887, 60 So. 3, 1912 Miss. LEXIS 132 (Miss. 1912).

Alteration of existing instrument may constitute forgery. Donaldson v. State, 102 Miss. 346, 59 So. 99, 1912 Miss. LEXIS 63 (Miss. 1912).

Instrument alleged to be forged, if available, must be produced in evidence. Deal v. State, 96 Miss. 82, 50 So. 495, 1909 Miss. LEXIS 20 (Miss. 1909).

Forgery is not committed by the act of inducing one to sign a conveyance of land on false representations that the paper was a pension paper. The act under the common law was that of a cheat or swindle. Johnson v. State, 87 Miss. 502, 39 So. 692, 1905 Miss. LEXIS 131 (Miss. 1905).

RESEARCH REFERENCES

ALR.

Admissibility, in forgery prosecution, of other acts of forgery. 34 A.L.R.2d 777.

What are "forgeries" within coverage of forgery bond or insurance. 52 A.L.R.2d 207.

Alteration of figures indicating amount of check, bill, or note, without change in written words, as forgery. 64 A.L.R.2d 1029.

Am. Jur.

36 Am. Jur. 2d, Forgery §§ 26-34.

CJS.

37 C.J.S., Forgery §§ 24-32.

ARTICLE 2.

FORFEITURE OF PROPERTY FOR VIOLATIONS OF TRADEMARK AND RECORDINGS LAWS.

Sec.
97-21-101. Property used in trademark and recordings violations subject to civil forfeiture; who may institute proceedings.
97-21-103. Seizure and forfeiture proceedings; determination of property owner; determination of existence of parties with security interests affecting property; notice to holders of security interests; hearing; disposition of forfeited property and proceeds.

§ 97-21-101. Property used in trademark and recordings violations subject to civil forfeiture; who may institute proceedings.

(1) All property, real or personal, including money, used in the course of, intended for use in the course of, derived from, or realized through, conduct in violation of Section 97-21-53, 97-21-55, 97-21-57 or 97-23-89 is subject to civil forfeiture to the state pursuant to the provisions of Section 97-21-103; provided, however, that a forfeiture of personal property encumbered by a bona fide security interest or real property encumbered by a bona fide mortgage, deed of trust, lien or encumbrance of record shall be subject to the interest of the secured party or subject to the interest of the holder of the mortgage, deed of trust, lien or encumbrance of record if such secured party or holder neither had knowledge of or consented to the act or omission.

(2) Property subject to forfeiture may be seized by law enforcement officers upon process issued by any appropriate court having jurisdiction over the property. Seizure without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant or an inspection under a lawful administrative inspection;

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this article.

(3) The Attorney General, any district attorney or any state agency having jurisdiction over conduct in violation of Section 97-21-53, 97-21-55, 97-21-57 or 97-23-89 may institute civil proceedings under this section. In any

action brought under this section, the circuit court shall proceed as soon as practicable to the hearing and determination. Pending final determination, the circuit court may at any time enter such injunctions or restraining orders, or take such actions, including the acceptance of satisfactory performance bonds, as the court may deem proper.

(4) Any aggrieved person may institute a civil proceeding against any person or enterprise convicted of engaging in activity in violation of Section 97-21-53, 97-21-55, 97-21-57 or 97-23-89. In such proceeding, relief shall be granted in conformity with the principles that govern the granting of injunctive relief from threatened loss or damage in other civil cases, except that no showing of immediate and irreparable injury, loss or damage to the person shall have to be made.

(5) The Attorney General may, upon timely application, intervene in any civil action or proceeding brought under this section if he certifies that, in his opinion, the action or proceeding is of general public importance. In such action or proceeding, the state shall be entitled to the same relief as if the Attorney General instituted the action or proceeding.

(6) Notwithstanding any other provision of law, a criminal or civil action or proceeding under this article may be commenced at any time within five (5) years after the conduct in violation of law terminates or the cause of action accrues. If a criminal prosecution or civil action or other proceeding is brought, or intervened in, to punish, prevent or restrain any violation of law, the running of the period of limitations prescribed by this section with respect to any cause of action arising under this section which is based, in whole or in part, upon any matter complained of in any such prosecution, action or proceeding shall be suspended during the pendency of such prosecution, action or proceeding and for two (2) years following its termination.

(7) The application of one (1) civil remedy under any provision of this article shall not preclude the application of any other remedy, civil or criminal, under this article or any other provision of law. Civil remedies under this article are supplemental.

HISTORY: Laws, 2011, ch. 346, § 1, eff from and after July 1, 2011.

§ 97-21-103. Seizure and forfeiture proceedings; determination of property owner; determination of existence of parties with security interests affecting property; notice to holders of security interests; hearing; disposition of forfeited property and proceeds.

(1) When any property is seized pursuant to Section 97-21-101, proceedings under this section shall be instituted promptly.

(2)(a) A petition for forfeiture shall be filed promptly in the name of the State of Mississippi with the clerk of the circuit court of the county in which the seizure is made. A copy of such petition shall be served upon the following persons by service of process in the same manner as in civil cases:

(i) The owner of the property, if address is known;

(ii) Any secured party who has registered his lien or filed a financing statement as provided by law, if the identity of such secured party can be ascertained by the state by making a good faith effort to ascertain the identity of such secured party as described in paragraphs (b), (c), (d), (e) and (f) of this subsection;

(iii) Any other bona fide lienholder or secured party or other person holding an interest in the property in the nature of a security interest of whom the state has actual knowledge;

(iv) A holder of a mortgage, deed of trust, lien or encumbrance of record, if the property is real estate by making a good faith inquiry as described in paragraph (g) of this subsection; and

(v) Any person in possession of property subject to forfeiture at the time that it was seized.

(b) If the property is a motor vehicle susceptible of titling under the Mississippi Motor Vehicle Title Law and if there is any reasonable cause to believe that the vehicle has been titled, the state shall make inquiry of the Department of Revenue as to what the records of the Department of Revenue show as to who is the record owner of the vehicle and who, if anyone, holds any lien or security interest which affects the vehicle.

(c) If the property is a motor vehicle and is not titled in the State of Mississippi, then the state shall attempt to ascertain the name and address of the person in whose name the vehicle is licensed, and if the vehicle is licensed in a state which has in effect a certificate of title law, the state shall make inquiry of the appropriate agency of that state as to what the records of the agency show as to who is the record owner of the vehicle and who, if anyone, holds any lien, security interest, or other instrument in the nature of a security device which affects the vehicle.

(d) If the property is of a nature that a financing statement is required by the laws of this state to be filed to perfect a security interest affecting the property and if there is any reasonable cause to believe that a financing statement covering the security interest has been filed under the laws of this state, the state shall make inquiry of the appropriate office designated in Section 75-9-501 as to what the records show as to who is the record owner of the property and who, if anyone, has filed a financing statement affecting the property.

(e) If the property is an aircraft or part thereof and if there is any reasonable cause to believe that an instrument in the nature of a security device affects the property, then the state shall make inquiry of the administrator of the Federal Aviation Administration as to what the records of the administrator show as to who is the record owner of the property and who, if anyone, holds an instrument in the nature of a security device which affects the property.

(f) In the case of all other personal property subject to forfeiture, if there is any reasonable cause to believe that an instrument in the nature of a security device affects the property, then the state shall make a good faith inquiry to identify the holder of any such instrument.

(g) If the property is real estate, the state shall make inquiry at the appropriate places to determine who is the owner of record and who, if anyone is a holder of a bona fide mortgage, deed of trust, lien or encumbrance.

(h) In the event the answer to an inquiry states that the record owner of the property is any person other than the person who was in possession of it when it was seized, or states that any person holds any lien, encumbrance, security interest, other interest in the nature of a security interest, mortgage or deed of trust which affects the property, the state shall cause any record owner and also any lienholder, secured party, other person who holds an interest in the property in the nature of a security interest, or holder of an encumbrance, mortgage or deed of trust which affects the property to be named in the petition of forfeiture and to be served with process in the same manner as in civil cases.

(i) If the owner of the property cannot be found and served with a copy of the petition of forfeiture, or if no person was in possession of the property subject to forfeiture at the time that it was seized and the owner of the property is unknown, the state shall file with the clerk of the court in which the proceeding is pending an affidavit to such effect, whereupon the clerk of the court shall publish notice of the hearing addressed to "the Unknown Owner of ____________," filling in the blank space with a reasonably detailed description of the property subject to forfeiture. Service by publication shall contain the other requisites prescribed in Section 11-33-41, and shall be served as provided in Section 11-33-37 for publication of notice for attachments at law.

(j) No proceedings instituted pursuant to the provisions of this article shall proceed to hearing unless the judge conducting the hearing is satisfied that this section has been complied with. Any answer received from an inquiry required by paragraphs (b) through (g) of this subsection shall be introduced into evidence at the hearing.

(3)(a) An owner of property that has been seized shall file a verified answer within twenty (20) days after the completion of service of process. If no answer is filed, the court shall hear evidence that the property is subject to forfeiture and forfeit the property to the state. If an answer is filed, a time for hearing on forfeiture shall be set within thirty (30) days of filing the answer or at the succeeding term of court if court would not be in progress within thirty (30) days after filing the answer. Provided, however, that upon request by the state or the owner of the property, the court may postpone said forfeiture hearing to a date past the time any criminal action is pending against said owner.

(b) If the owner of the property has filed a verified answer denying that the property is subject to forfeiture, then the burden is on the state or the jurisdiction instituting proceedings to prove that the property is subject to forfeiture. The burden of proof placed upon the state or the jurisdiction instituting proceedings shall be clear and convincing proof. However, if no answer has been filed by the owner of the property, the petition for forfeiture may be introduced into evidence and is prima facie evidence that the property is subject to forfeiture.

(c) At the hearing any claimant of any right, title, or interest in the property may prove his lien, encumbrance, security interest, other interest in the nature of a security interest, mortgage or deed of trust to be bona fide and created without knowledge or consent that the property was to be used so as to cause the property to be subject to forfeiture.

(d) If it is found that the property is subject to forfeiture, then the judge shall forfeit the property to the state or the jurisdiction instituting proceedings. However, if proof at the hearing discloses that the interest of any bona fide lienholder, secured party, other person holding an interest in the property in the nature of a security interest or any holder of a bona fide encumbrance, mortgage or deed of trust is greater than or equal to the present value of the property, the court shall order the property released to him. If such interest is less than the present value of the property and if the proof shows that the property is subject to forfeiture, the court shall order the property forfeited to the state or the jurisdiction instituting proceedings.

(4)(a) All personal property, including money, which is forfeited to the state or the jurisdiction instituting proceedings and is not capable of being sold at public auction shall be liquidated and the proceeds, after deduction of all storage and court costs, shall be forwarded to the State Treasurer and deposited in the General Fund of the state or in the general fund of the county of the jurisdiction instituting proceedings.

(b) All real estate which is forfeited to the state or the jurisdiction instituting proceedings shall be sold to the highest bidder at a public auction to be conducted by the state or the jurisdiction instituting proceedings at such place, on such notice and in accordance with the same procedure, as far as practicable, as is required in the case of sales of land under execution of law. The proceeds of such sale shall first be applied to the cost and expense in administering and conducting such sale, then to the satisfaction of all mortgages, deeds of trusts, liens and encumbrances of record on such property. All proceeds in excess of the amount necessary for the cost of the sale of such land and the satisfaction of any liens thereon shall be deposited in the General Fund of the State Treasury or in the general fund of the county of the jurisdiction instituting proceedings.

(c) All other property that has been seized by the state or the jurisdiction instituting proceedings and that has been forfeited shall, except as otherwise provided, be sold at a public auction for cash by the state or the jurisdiction instituting proceedings to the highest and best bidder after advertising the sale for at least once each week for three (3) consecutive weeks, the last notice to appear not more than ten (10) days nor less than five (5) days prior to such sale, in a newspaper having a general circulation in the jurisdiction instituting proceedings or throughout the State of Mississippi. Such notices shall contain a description of the property to be sold and a statement of the time and place of sale. It shall not be necessary to the validity of such sale either to have the property present at the place of sale or to have the name of the owner thereof stated in such notice. The proceeds of the sale shall be delivered to the circuit clerk and shall be disposed of as follows:

(i) To any bona fide lienholder, secured party, or other party holding an interest in the property in the nature of a security interest, to the extent of his interest; and

(ii) The balance, if any, after deduction of all storage and court costs, shall be forwarded to the State Treasurer and deposited with and used as general funds of the state or to the jurisdiction instituting proceedings and deposited in the county general fund.

(d) The Department of Revenue shall issue a certificate of title to any person who purchases property under the provisions of this section when a certificate of title is required under the laws of this state.

HISTORY: Laws, 2011, ch. 346, § 2, eff from and after July 1, 2011.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in an internal reference in subsection (2)(a)(iv) by substituting "paragraph (g) of this subsection" for "paragraph (g) of this section" and corrected an error in (2)(j) by substituting "paragraphs (b) through (g) of this subsection" for "paragraphs (b) through (g) of this section." The Joint Committee ratified the correction at its October 19, 2020, meeting.

CHAPTER 23.

OFFENSES AFFECTING TRADE, BUSINESS AND PROFESSIONS

Sec.

97-23-1. False advertising and misrepresentation of nature of business.
97-23-3. Advertising; untrue, deceptive, or misleading.
97-23-5. Advertising; pulling down advertisements.
97-23-7. Cotton; fraudulent packing.
97-23-9. Cotton; seed-cotton not sold at night.
97-23-11. Cotton; scalage; deductions from true weight of bale prohibited.
97-23-13. Cotton; scalage; purchasers of cotton to account for actual weight.
97-23-15. Cottonseed meal; adulterated meal to be branded.
97-23-17. Customers, patrons or clients; right to choose or refuse to serve; penalty for violation.
97-23-19. Embezzlement; by agents, bailees, trustees, servants and persons generally.
97-23-21. Embezzlement; evidence of debt negotiable by delivery but not delivered.
97-23-23. Embezzlement; buying or receiving embezzled goods.
97-23-25. Embezzlement; property held in trust or received on contract.
97-23-27. Embezzlement; property borrowed or hired.
97-23-29. Enticing away servant or lessee without written consent; provisions applicable to minors.
97-23-31. Insurance; acting as agent for company not complying with law.
97-23-33. Interference with exercise of lawful trade or calling by printing or distributing of matter, etc.
97-23-35. Newspapers and periodicals to print names of their editors.
97-23-37. Oleomargarine and other imitation food to be branded.
97-23-39. Preventing employment by force or violence; penalty.
97-23-41. Preventing employment by force or violence; conspiracy.
97-23-43. Profession; practicing without license.
97-23-45 through 97-23-53. Repealed.
97-23-55. Storage battery; unlawful to deface rental battery.
97-23-57. Storage battery; unlawful to sell or give away rental battery.
97-23-59. Storage battery; unlawful to retain or recharge rental battery.
97-23-61. Storage battery; penalty.
97-23-63 through 97-23-82. Repealed.
97-23-83. Threats or coercion to prevent lawful conduct of business.
97-23-85. Unlawful restraint of trade; boycott; civil liability.
97-23-87. Unauthorized copying or sale of recordings.
97-23-89. Sale, distribution of recordings without display of required information.
97-23-91. Construction of Sections 97-23-87 through 97-23-91; private causes of action; confiscation of illegal recordings.
97-23-92. Unauthorized use of audiovisual recording device in motion picture theater.
97-23-93. Shoplifting; elements of offense; presumptions; evidence; penalties; aggregation of multiple offenses occurring within same jurisdiction over 30-day period in determining gravity of offense.
97-23-93.1. Shoplifting; use of theft detection device remover prohibited; use of theft detection shielding device prohibited; activation of anti-shoplifting device constitutes probable cause for detention.
97-23-94. Aiding and abetting shoplifting by minor; penalty.

Sec.
97-23-94.1. Punishment for violation of Section 97-23-94.
97-23-95. Shoplifting; detention of suspect for questioning without incurring civil liability.
97-23-96. Civil remedy for shoplifting violations; written demand prior to commencing civil proceedings; recovery from parents or legal guardians of minors; costs.
97-23-97. Scalping of admission tickets at college events held on state property.
97-23-99. Giving away of merchandise by employee without authorization of merchant.
97-23-101. Laundering of monetary instruments; offense; penalties; effect of federal conviction.
97-23-103. Home repair fraud; definitions; exceptions; penalties.
97-23-105. Falsely using or producing retail sales receipts and universal product codes.
97-23-107. Residential mortgage fraud; elements of offense; establishing venue; penalties; forfeiture of all property used in or obtained through violation of section; pattern of residential mortgage fraud.
97-23-109. Mass picketing by union which obstructs or interferes with free ingress or egress of any person to and from any place of business or private residence; injunctive relief without showing of irreparable harm for business or property owner.
97-23-111. Automated sales suppression devices, zappers and phantom-ware programs prohibited; definitions; penalties.

§ 97-23-1. False advertising and misrepresentation of nature of business.

(1) It shall be unlawful for any person, firm, association or corporation to misrepresent the true nature of its business by use of the words "manufacturer," "wholesaler," "retailer," or words of similar import or for any person, firm, association or corporation to represent itself as selling at wholesale, or use the word "wholesale" in any form of sale or advertising unless such person, firm, association or corporation is actually selling at wholesale those items advertised for the purpose of resale. For the purpose of this section, the term "wholesale" shall be defined as a sale made for the purpose of resale by the purchaser on which a wholesale sales tax is charged, and not one made to a consuming purchaser on which a retail sales tax is charged.

However, this section shall in nowise affect or prohibit a corporation from using the word "wholesale" in its corporate name even though such corporation also does a retail business. However, if it does a retail business, it must indicate in its advertisements that such business is being conducted by its retail division, or that such advertised products are to be sold only at retail.

(2) The violation of this section shall constitute a misdemeanor, and any person or firm convicted of violating this section shall be fined not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00).

HISTORY: Codes, 1942, § 2144.3; Laws, 1962, ch. 315, §§ 1, 2.

Cross References — White-collar crime investigation, see § 7-5-59.
False and misleading advertisements, see § 97-23-3.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

ALR.

Validity, construction, and effect of state legislation regulating or controlling "bait-and-switch" or "disparagement" advertising or sales practices. 50 A.L.R.3d 1008.

Advertising agency as subject to FTC order under 15 USCS § 45 for false or deceptive representations in its advertisements for client's product. 47 A.L.R. Fed. 393.

Am. Jur.

32 Am. Jur. 2d, False Pretenses § 97.

1A Am. Jur. Pl & Pr Forms (Rev), Advertising, Forms 31 et seq. (false and misleading advertising).

18 Am. Jur. Proof of Facts 2d 265, Unfair Competition – Appropriation of Competitor's Advertising Matter, Methods, or Slogan.

CJS.

35 C.J.S., False Pretenses §§ 20, 33.

§ 97-23-3. Advertising; untrue, deceptive, or misleading.

Any person who, with intent to sell or in any way dispose of merchandise, securities, service, or anything offered by such person, directly or indirectly, to the public for sale or distribution, or who, with intent to increase the consumption of or demand for such merchandise, securities, service or other thing, or to induce the public in any manner to enter into any obligation relating thereto, or to acquire title thereto, or an interest therein, makes, publishes, disseminates, circulates or places before the public, or causes, directly or indirectly, to be made, published, disseminated, circulated or placed before the public within the state, in a newspaper or other publication, or in the form of a book, notice, handbill, poster, bill, circular, pamphlet or letter, or by a label affixed to the merchandise or its container, or in any other way, an advertisement of any sort regarding merchandise, securities, service or anything so offered to the public, which advertisement contains any assertion, representation or statement of fact which is untrue, deceptive or misleading, including but not limited to representing himself as selling at wholesale unless he is actually selling at wholesale those items so represented, and which such person knew, or might on reasonable investigation have ascertained to be untrue, deceptive or misleading, shall be punished by a fine of not more than five hundred dollars ($500.00), and the offending person, whether found guilty or not, may be held civilly responsible in tort for damages to persons or property proximately resulting from a violation of this section. This section shall not apply to any owner, publisher, printer, agent or employee of a newspaper or other publication, periodical or circular, or to any agent of the advertiser who in good faith and without knowledge of the falsity or deceptive character thereof publishes, causes to be published, or participates in the publication of such advertisement. Firms with the word "wholesale" in their corporate title are not in violation of this section so long as they identify the sales as being made by their retail division.

HISTORY: Codes, 1942, § 2003.5; Laws, 1962, ch. 317, eff from and after July 1, 1962.

Cross References — White-collar crime investigation, see § 7-5-59.
False advertising and misrepresentation of nature of business, see § 97-23-1.

JUDICIAL DECISIONS

1. In general.

Because plaintiff former smoker identified no representations about defendant tobacco producers' cigarettes, much less any that were untrue, deceptive, or misleading, and conceded the advertising was not or misleading and that it did not cause her to start or continue smoking, a false advertising claim under Miss. Code Ann. § 97-23-3 failed. Woods v. R.J. Reynolds Tobacco Co., 635 F. Supp. 2d 530, 2009 U.S. Dist. LEXIS 51565 (S.D. Miss. 2009).

The plaintiffs were properly denied leave to amend the complaint in order to add a claim for misleading and deceptive advertising practices in relation to the home they rented where the advertisement for the home merely described the nature of the house in general terms, and no representations were made in the ad the defects alleged by the plaintiffs. Sweatt v. Murphy, 733 So. 2d 207, 1999 Miss. LEXIS 43 (Miss. 1999).

Allegation that advertisement for student loans was misleading because primary purpose was to sell life insurance states claim under this section; punitive damages are not available where evidence in case does not support claim for fraud and is sufficient under statute only because statute allows recovery for advertising which is merely "misleading" as opposed to fraudulent. Watson v. First Commonwealth Life Ins. Co., 686 F. Supp. 153, 1988 U.S. Dist. LEXIS 5421 (S.D. Miss. 1988).

Allegations that insurance company's advertisement for student loans was misleading because primary purpose of advertisement was to sell life insurance states claim under Miss. Code Annotated § 97-23-3, only because statute allows recovery for advertising which is merely "misleading" as opposed to fraudulent. Watson v. First Commonwealth Life Ins. Co., 686 F. Supp. 153, 1988 U.S. Dist. LEXIS 5421 (S.D. Miss. 1988).

The statement in an advertisement issued by a supermarket in which it was stated that a notary had "purchased" products in a competitor's market as part of a comparison shopping endeavor when, in fact, the notary had merely accompanied an employee of the supermarket who made the purchases, did not constitute a violation of the statute where the portion of the advertisement concerning the notary's role had been an insignificant part of the ad, had been placed in a small area in an inconspicuous spot, and had only verified that the ad had been correct according to him and where there was no proof that any customers had in any way been misled or deceived by the misstatement which was subsequently corrected. Dixieland Food Stores, Inc. v. Kelly's Big Star, Inc., 391 So. 2d 633, 1980 Miss. LEXIS 2156 (Miss. 1980).

RESEARCH REFERENCES

ALR.

Validity, construction, and effect of state legislation regulating or controlling "bait-and-switch" or "disparagement" advertising or sales practices. 50 A.L.R.3d 1008.

What constitutes "false advertising" of food products or cosmetics within §§ 5 and 12 of the Federal Trade Commission Act (15 USCS §§ 45, 52). 50 A.L.R. Fed. 16.

Am. Jur.

3 Am. Jur. 2d, Advertising §§ 3, 15.
32 Am. Jur. 2d, False Pretenses § 97.

CJS.

35 C.J.S., False Pretenses §§ 30, 31.

Law Reviews.

Robinson III, Mississippi Statutory

Claims for False Advertising, 20 Miss. C. L. Rev. 165 (Fall, 1999).

§ 97-23-5. Advertising; pulling down advertisements.

If any person shall pull down any advertisement authorized by law, he shall, on conviction thereof, be fined not more than five hundred dollars, or be imprisoned not more than six months.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 1(74); 1857, ch. 64, art. 337; 1871, § 2830; 1880, § 2702; 1892, § 958; 1906, § 1034; Hemingway's 1917, § 759; 1930, § 777; 1942, § 2003.

§ 97-23-7. Cotton; fraudulent packing.

If any person shall fraudulently pack or bale any cotton, he shall, on conviction thereof, be fined not more than five hundred dollars, or imprisoned in the county jail not more than six months, or both.

HISTORY: Codes, Hutchinson's 1848, ch. 56, art. 12; 1857, ch. 64, art. 65; 1871, § 2720; 1880, § 2762; 1892, § 1011; 1906, § 1088; Hemingway's 1917, § 814; 1930, § 837; 1942, § 2063.

Cross References — Regulation of cotton gins, see §§ 75-41-1 et seq.

§ 97-23-9. Cotton; seed-cotton not sold at night.

Any person who shall buy, sell, or exchange or receive or deliver, in pursuance of any contract of sale or exchange, any cotton in the seed or ginned and not baled, between sunset on one day and sunrise on the next, shall, upon conviction, be punished as for a misdemeanor.

HISTORY: Codes, 1880, § 2763; 1892, § 1012; 1906, § 1089; Hemingway's 1917, § 815; 1930, § 838; 1942, § 2064.

§ 97-23-11. Cotton; scalage; deductions from true weight of bale prohibited.

If any purchaser or weigher of cotton shall deduct from the true weight of any bale or package thereof any amount whatever, as scalage, with intent to diminish the sum to be paid or credited to the seller, he shall be guilty of a misdemeanor, and, on conviction, shall be fined not less than ten dollars nor more than twenty dollars.

HISTORY: Codes, 1892, § 1296; 1906, § 1370; Hemingway's 1917, § 1106; 1930, § 1135; 1942, § 2372; Laws, 1888, p. 91.

Cross References — Cotton weigher's register of cotton weighed, see § 75-41-3.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 97-23-13. Cotton; scalage; purchasers of cotton to account for actual weight.

If any purchaser of cotton shall fail to account to the seller for the actual weight of the cotton bought, except where the amount of the deduction is agreed upon between them, or adjudged by a disinterested person for them, he shall be guilty of a misdemeanor, and, on conviction, shall be punished as prescribed in the last section.

HISTORY: Codes, 1892, § 1297; 1906, § 1371; Hemingway's 1917, § 1107; 1930, § 1136; 1942, § 2373; Laws, 1888, p 91.

Cross References — Cotton weigher's register of cotton weighed, see § 75-41-3.

§ 97-23-15. Cottonseed meal; adulterated meal to be branded.

It shall be unlawful for any person or corporation to adulterate any cottonseed meal with hulls, sawdust or anything else, without noting such adulteration in plain and legible characters on each sack, and it shall be unlawful for any person to sell or barter in this state any cottonseed meal adulterated with sawdust or anything else without such adulteration being noted in plain and legible characters on each sack or receptacle thereof. Any person or corporation violating the foregoing provisions of this section shall be guilty of a misdemeanor, and, on conviction, shall be fined in a sum not less than one hundred nor more than one thousand dollars.

HISTORY: Codes, 1906, § 1317; Hemingway's 1917, § 1050; 1930, § 840; 1942, § 2066; Laws, 1912, ch. 138.

Cross References — Penalty for violation of commercial fertilizer regulations, see § 75-47-37.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

This provision has been held constitutional. Alcorn Cotton Oil Co. v. State, 100 Miss. 299, 56 So. 397, 1911 Miss. LEXIS 33 (Miss. 1911).

Code 1906, § 1317, not repealed by Acts 1908, ch. 107 § 14. Alcorn Cotton Oil Co. v. State, 100 Miss. 299, 56 So. 397, 1911 Miss. LEXIS 33 (Miss. 1911).

§ 97-23-17. Customers, patrons or clients; right to choose or refuse to serve; penalty for violation.

(1) Every person, firm or corporation engaged in any public business, trade or profession of any kind whatsoever in the State of Mississippi, including, but not restricted to, hotels, motels, tourist courts, lodging houses, restaurants, dining room or lunch counters, barber shops, beauty parlors, theatres, moving picture shows, or other places of entertainment and amuse-

ment, including public parks and swimming pools, stores of any kind wherein merchandise is offered for sale, is hereby authorized and empowered to choose or select the person or persons he or it desires to do business with, and is further authorized and empowered to refuse to sell to, wait upon or serve any person that the owner, manager or employee of such public place of business does not desire to sell to, wait upon or serve. The provisions of this section shall not apply to corporations or associations engaged in the business of selling electricity, natural gas, or water to the general public, or furnishing telephone service to the public.

(2) Any public place of business may, if it so desires, display a sign posted in said place of business serving notice upon the general public that "the management reserves the right to refuse to sell to, wait upon or serve any person," however, the display of such a sign shall not be a prerequisite to exercising the authority conferred by this section.

(3) Any person who enters a public place of business in this state, or upon the premises thereof, and is requested or ordered to leave therefrom by the owner, manager or any employee thereof, and after having been so requested or ordered to leave, refuses so to do, shall be guilty of a trespass and upon conviction therefor shall be fined not more than five hundred dollars ($500.00) or imprisoned in jail not more than six (6) months, or both such fine and imprisonment.

HISTORY: Codes, 1942, § 2046.5; Laws, 1956, ch. 257, §§ 1-3.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Exclusion because of prior shoplifting incident.
3. Probable cause.

1. In general.

Mississippi, by passage of this section [Code 1942, § 2046.5], merely restated the common law rule allowing restauranteurs to serve whomever they wished. Adickes v. S. H. Kress & Co., 409 F.2d 121, 1968 U.S. App. LEXIS 4339 (2d Cir. N.Y. 1968), rev'd, 398 U.S. 144, 90 S. Ct. 1598, 26 L. Ed. 2d 142, 1970 U.S. LEXIS 31 (U.S. 1970).

Where the plaintiff in an action for damages against a variety store can show that the defendant discriminated against her pursuant to a custom, enforced by the state under this section [Code 1942, § 2046.5], of refusing luncheon service to whites in the company of Negroes, she will satisfy the state action requirement of 42 USC § 1983 which provides that any person who "under cover of" state law deprives another of "rights, privileges, or immunities" secured by the constitution and laws, shall be liable to the party injured in an action at law. Adickes v. S. H. Kress & Co., 252 F. Supp. 140, 1966 U.S. Dist. LEXIS 7788 (S.D.N.Y. 1966), aff'd, 409 F.2d 121, 1968 U.S. App. LEXIS 4339 (2d Cir. N.Y. 1968).

Persons arrested for violating ordinances by parading without a permit, in an antisegregation demonstration, held not entitled to habeas corpus in federal court on ground that mass arrests had so loaded state courts as to deprive them of an adequate remedy under state law. Brown v. Rayfield, 320 F.2d 96, 1963 U.S. App. LEXIS 4762 (5th Cir. Miss.), cert. denied, 375 U.S. 902, 84 S. Ct. 191, 11 L. Ed. 2d 143, 1963 U.S. LEXIS 255 (U.S. 1963).

An action to enjoin enforcement of the statute, the court, in lieu of injunctive relief, declared the rights of complainants to the use of public facilities. Clark v. Thompson, 206 F. Supp. 539, 1962 U.S. Dist. LEXIS 3769 (S.D. Miss. 1962), aff'd, 313 F.2d 637, 1963 U.S. App. LEXIS 5965 (5th Cir. Miss. 1963).

In an action for an injunction restraining defendants from enforcing or executing subsection (1) of this section [Code 1942, § 2046.5] subsection (7) of Code 1942, § 2056, and § 4065.3, against the plaintiffs by preventing them from using public recreational facilities on an integrated and equal basis solely on the ground of race and color, the federal three-judge statutory court would be dissolved and the case left for decision of a single federal district judge, where it appeared that what plaintiffs actually sought was to attack a pattern or practice rather than the constitutional validity of a statute or actions under it. Clark v. Thompson, 204 F. Supp. 30, 1962 U.S. Dist. LEXIS 3102 (S.D. Miss. 1962).

2. Exclusion because of prior shoplifting incident.

Premises liability action was dismissed on summary judgment because newly discovered evidence clearly established a customer's status as a trespasser at the time of her alleged abduction from a store's parking lot where the store was authorized to ban her from the store under Miss. Code Ann. § 97-23-17 after a prior shoplifting incident, the customer failed to show that store breached its duty to a trespasser, and store was immune from liability pursuant to Miss. Code Ann. § 97-17-103(2) where the customer had committed a criminal trespass under Miss. Code Ann. § 97-17-97 at the time of the incident. Bates v. Wal-Mart Stores, 413 F. Supp. 2d 763, 2006 U.S. Dist. LEXIS 2652 (S.D. Miss. 2006).

3. Probable cause.

Trial judge did not err by granting a directed verdict on plaintiff's claim of malicious prosecution because, although the charge for disturbing the peace was eventually dropped, there was probable cause for plaintiff's arrest at the time it was initiated as casino employees asked plaintiff to leave the premises, and he pointedly refused; and the casino employees had probable cause to believe that plaintiff's conduct might lead to a breach of the peace. Lee v. MGM Resorts Miss., Inc., 200 So. 3d 1129, 2016 Miss. App. LEXIS 57 (Miss. Ct. App.), cert. denied, 203 So. 3d 598, 2016 Miss. LEXIS 401 (Miss. 2016).

RESEARCH REFERENCES

ALR.

Trailer park as place of public accommodation within meaning of state civil rights statutes. 70 A.L.R.3d 1142.

State laws prohibiting sex discrimination as violated by dress or grooming requirements for customers of establishments serving food or beverages. 89 A.L.R.3d 7.

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Exclusion of one sex from admission to or enjoyment of equal privileges in places of accommodation or entertainment as actionable sex discrimination under state law. 38 A.L.R.4th 339.

Trespass: state prosecution for unauthorized entry, or occupation, for public demonstration purposes, of business, industrial, or utility premises. 41 A.L.R.4th 773.

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15 Am. Jur. 2d, Civil Rights §§ 29 et seq.

Lawyers' Edition.

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Racial discrimination involving recreational facilities. 29 L. Ed. 2d 1028.

§ 97-23-19. Embezzlement; by agents, bailees, trustees, servants and persons generally.

If any person shall embezzle or fraudulently secrete, conceal, or convert to his own use, or make way with, or secrete with intent to embezzle or convert to his own use, any goods, rights in action, money, or other valuable security, effects, or property of any kind or description which shall have come or been entrusted to his care or possession by virtue of his office, position, place, or employment, either in mass or otherwise, he shall be guilty of embezzlement.

(a) Any person guilty of embezzlement of any goods, rights of action, money, or other valuable security, effects or property of any kind or description with a value of less than One Thousand Dollars ($1,000.00), shall be guilty of misdemeanor embezzlement, and, upon conviction thereof, may be sentenced to a term of imprisonment in the county jail not exceeding six (6) months, or fined not more than One Thousand Dollars ($1,000.00), or both if the court finds substantial and compelling reasons why the offender cannot be safely and effectively supervised in the community, is not amenable to community-based treatment or poses a significant risk to public safety. If such a finding is not made, the court shall suspend the sentence of imprisonment and impose a period of probation not exceeding one (1) year or a fine of not more than One Thousand Dollars ($1,000.00) or both. Any person convicted of a third or subsequent offense under this subsection where the value of the property is not less than Five Hundred Dollars ($500.00), shall be imprisoned in the Penitentiary for a term not exceeding three (3) years or fined an amount not exceeding Two Thousand Dollars ($2,000.00), or both.

(b) Any person guilty of embezzlement of any goods, rights in action, money, or other valuable security, effects or property of any kind or description with a value of One Thousand Dollars ($1,000.00) or more but less than Five Thousand Dollars ($5,000.00), shall be guilty of felony embezzlement, and, upon conviction thereof, shall be imprisoned in the custody of the Department of Corrections not more than five (5) years, or fined not more than Five Thousand Dollars ($5,000.00), or both.

(c) Any person guilty of embezzlement of any goods, rights in action, money, or other valuable security, effects or property of any kind or description with a value of Five Thousand Dollars ($5,000.00) or more but less than Twenty-five Thousand Dollars ($25,000.00), shall be guilty of felony embezzlement, and, upon conviction thereof, shall be imprisoned in the Penitentiary for not more than ten (10) years, or fined not more than Twenty-five Thousand Dollars ($25,000.00), or both.

(d) Any person guilty of embezzlement of any goods, rights in action, money, or other valuable security, effects or property of any kind or description with a value of Twenty-five Thousand Dollars ($25,000.00) or more, shall be guilty of felony embezzlement, and, upon conviction thereof, shall be imprisoned in the Penitentiary not more than twenty (20) years, or fined not more than Twenty-five Thousand Dollars ($25,000.00), or both.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 4(59); 1857, ch. 64, art. 82; 1871, § 2547; 1880, § 2782; 1892, § 1058; 1906, § 1136; Hemingway's 1917, § 864; 1930, § 889; 1942, § 2115; Laws, 2003, ch. 499, § 7; Laws, 2007, ch. 378, § 1; Laws, 2014, ch. 457, § 28, eff from and after July 1, 2014.

Cross References — White-collar crime investigations, see § 7-5-59.

Disqualification of persons convicted of certain crimes to hold office in labor organizations, etc., see § 71-1-49.

Penal laws applicable to operation of credit unions, see § 81-13-71.

False entries and other offenses by state trust company participants, see § 81-27-6.206.

Prohibition against employees of merchants giving away merchandise without merchant's permission, see § 97-23-99.

Embezzlement of railroad tickets, see § 97-25-9.

Organized theft or fraud enterprise applicable to conduct proscribed in this section, see § 97-43-3.1.

Limitations of prosecutions generally, see § 99-1-5.

What constitutes a commencement of a prosecution, see § 99-1-7.

Description of property in indictment for embezzlement, see § 99-7-31.

Prosecution of embezzlement, see § 99-11-11.

Mandatory minimum sentence for embezzlement or other unlawful conversion of public funds, see § 99-19-18.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Indictment.
3. Defenses.
4. Election between charges.
5. Proof.
6. Instructions.
7. Sentencing.
8. Motion for directed verdict.

1. In general.

In defendant's cocaine possession case, although a wtiness's misdemeanor embezzlement conviction was admissible for impeachment purposes under Miss. R. Evid. 609, the Mississippi Supreme Court questioned the probative value of a misdemeanor-embezzlement conviction on a witness's truthfulness, particularly in light of its pronouncement that theft crimes were outside the scope of those permitted for impeachment purposes under Rule 609(a)(2). Baskin v. State, 145 So. 3d 601, 2014 Miss. LEXIS 68 (Miss. 2014).

There is no lesser-included offense of embezzlement. Luckett v. State, 989 So. 2d 995, 2008 Miss. App. LEXIS 527 (Miss. Ct. App. 2008).

The legislature's narrow and precise language in the embezzlement statute does not include limited liability companies because Miss. Code Ann. § 97-23-19 plainly does not allow agents of unincorporated entities to be subjected to prosecution for embezzlement. Champluvier v. State, 942 So. 2d 145, 2006 Miss. LEXIS 636 (Miss. 2006).

In her embezzlement prosecution, defendant failed to satisfy the first and third prongs of the four-prong Brady test as she failed to show that the evidence was favorable or that the State even possessed the subject bank records (several banks were involved). Furthermore, there was no proof in the record that would have allowed the appellate court to decide whether the evidence allegedly suppressed was favorable or unfavorable and defendant also failed to satisfy the second prong under the Brady test, as she failed to prove that she did not possess the evidence nor could she obtain it herself with any reasonable diligence. Montgomery v. State, 891 So. 2d 179, 2004 Miss. LEXIS 1374 (Miss. 2004).

Defendant's period of supervised release was not counted toward his time served; therefore, defendant's sentence of three years to serve, seven years suspended, and five years of post release supervision was within the ten years allowable pursuant to the embezzlement statute, Miss. Code Ann. § 97-23-19. Brown v. State, 872 So. 2d 96, 2004 Miss. App. LEXIS 380 (Miss. Ct. App. 2004).

As a trial judge clearly had authority via Miss. Code Ann. § 99-19-32 to impose a fine in addition to the penitentiary sentence imposed under the felony portion of the embezzlement statute, former Miss. Code Ann. § 97-23-19 (which provided for a fine only when being sentenced as a misdemeanant), the trial judge properly rejected the inmate's argument that upon payment of the fine he had completed his misdemeanor sentence and was entitled to release from the prison sentence. Gulley v. State, 870 So. 2d 652, 2004 Miss. LEXIS 218 (Miss. 2004).

A transaction between a wholesale seller of automobiles and a buyer constituted a sale rather than an entrustment of the automobiles and a subsequent embezzlement thereof where the transaction involved 13 automobiles, 11 of which were paid for after the buyer had taken possession of them and 2 of which were not paid for. Reed v. State, 523 So. 2d 62, 1988 Miss. LEXIS 66 (Miss. 1988).

Under this section prohibiting embezzlement by an agent, an escrow agent constituted a special agent for both parties to the escrow agreement, and the escrow agent therefore was an agent for one of such parties as alleged in the indictment within the meaning of this section. Cowart v. State, 349 So. 2d 506, 1977 Miss. LEXIS 2145 (Miss. 1977).

When a person, even an agent of the owner, takes possession of property with the unlawful intent to feloniously convert the property to his own use at the time he acquires possession, he is guilty of larceny and not embezzlement. Mahfouz v. State, 303 So. 2d 461, 1974 Miss. LEXIS 1438 (Miss. 1974).

Embezzlement involves wrongful or fraudulent appropriation of another's property. United States Fidelity & Guaranty Co. v. Constantin, 247 Miss. 812, 157 So. 2d 642, 1963 Miss. LEXIS 359 (Miss. 1963).

Conduct of service station operator required to report daily sales, in understating their amount, held embezzlement. United States Fidelity & Guaranty Co. v. Constantin, 247 Miss. 812, 157 So. 2d 642, 1963 Miss. LEXIS 359 (Miss. 1963).

Failure of owner's son-in-law and employee to return automobile with which he had been entrusted, constitutes embezzlement but not larceny. Peerless Ins. Co. v. St. Laurent, 247 Miss. 134, 154 So. 2d 135, 1963 Miss. LEXIS 286 (Miss. 1963).

To constitute embezzlement, something must have been done in execution of an intention to appropriate property in the possession of the accused to his own use. Gradsky v. State, 243 Miss. 379, 137 So. 2d 820, 1962 Miss. LEXIS 353 (Miss. 1962).

In a prosecution for the theft of certain cattle, defendant's co-indictee, who was the cattle manager and employee of the partnership owning the cattle, but who could only make sales for partnership upon authorization of one of the partners, was a mere caretaker, with custody of the property, so that the offense charged was grand larceny as contrasted with embezzlement. Mills v. State, 231 Miss. 641, 97 So. 2d 386, 1957 Miss. LEXIS 548 (Miss. 1957).

Embezzlement is the wrongful appropriation or conversion of property where the original taking was lawful, or with the consent of the owner, while in larceny the taking involves a trespass, and a felonious intent must exist at the time of such taking. Jackson v. State, 211 Miss. 828, 52 So. 2d 914, 1951 Miss. LEXIS 414 (Miss. 1951).

This section [Code 1942, § 2115] includes not only trustees, factors, carriers, and bailees of private persons, but those of both artificial and natural persons as corporations. State v. Journey, 105 Miss. 516, 62 So. 354, 1913 Miss. LEXIS 210 (Miss. 1913), overruled in part, Coleman v. State, 947 So. 2d 878, 2006 Miss. LEXIS 681 (Miss. 2006).

"Amount" and "value" synonymous when applied to money. Richberger v. State, 90 Miss. 806, 44 So. 772, 1907 Miss. LEXIS 122 (Miss. 1907).

2. Indictment.

Indictment charging defendant with embezzlement sufficiently provided notice of the essential elements of the crime of embezzlement, and the indictment cited to the statute proscribing embezzlement; accordingly, the indictment was proper. Wilson v. State, 12 So. 3d 8, 2008 Miss. App. LEXIS 746 (Miss. Ct. App. 2008), cert. denied, 14 So. 3d 731, 2009 Miss. LEXIS 306 (Miss. 2009).

Indictment charging defendant alleged that she had embezzled property "owned by an individual d/b/a a named engineering business." At the close of the State's case-in-chief, the trial court properly denied defendant's motion for a directed verdict alleging that the indictment was fatally defective because it failed to identify or prove the identity of the person or entity claiming ownership of the embezzled property; the trial court properly granted the State's motion to amend the indictment to name the "corporation" as the owner of the embezzled property as the matter was one of form, not of substance. Montgomery v. State, 891 So. 2d 179, 2004 Miss. LEXIS 1374 (Miss. 2004).

Indictment, substantially in words of Code, alleging firm of which accused was partner was agent of other partner to handle his money to buy cotton, and that accused by reason of employment as such agent of other partner had in his control $2,400 of other partner and, prior to a named date in a named county, without consent of owner, embezzled and converted money to accused's use, and fraudulently and feloniously concealed same, held not demurrable as vague and indefinite. State v. Coltharp, 176 Miss. 883, 170 So. 285, 1936 Miss. LEXIS 167 (Miss. 1936).

Indictment charging bank clerk had bank's money in his possession and embezzled same, not demurrable. Davis v. State, 108 Miss. 710, 67 So. 178, 1914 Miss. LEXIS 264 (Miss. 1914).

Indictment charging embezzlement and conversion of reel of films held sufficient. State v. Journey, 105 Miss. 516, 62 So. 354, 1913 Miss. LEXIS 210 (Miss. 1913), overruled in part, Coleman v. State, 947 So. 2d 878, 2006 Miss. LEXIS 681 (Miss. 2006).

Indictment must set out extrinsic facts necessary with writing to constitute forgery. Griffin v. State, 96 Miss. 309, 51 So. 466, 1909 Miss. LEXIS 60 (Miss. 1909); State v. Chapman, 103 Miss. 658, 60 So. 722, 1912 Miss. LEXIS 207 (Miss. 1912).

No distinction between words "care" and "possession" and use of either sufficient in indictment for embezzlement. Richberger v. State, 90 Miss. 806, 44 So. 772, 1907 Miss. LEXIS 122 (Miss. 1907).

Indictment not objectionable for failure to charge from whom the money under defendant's care was received. Richberger v. State, 90 Miss. 806, 44 So. 772, 1907 Miss. LEXIS 122 (Miss. 1907).

Indictment charging embezzlement by a bank cashier of money belonging to the bank, in the language of the statute, was sufficient. Richberger v. State, 90 Miss. 806, 44 So. 772, 1907 Miss. LEXIS 122 (Miss. 1907).

Form of indictment. Richberger v. State, 90 Miss. 806, 44 So. 772, 1907 Miss. LEXIS 122 (Miss. 1907).

3. Defenses.

Restitution of money converted does not preclude conviction for embezzlement. Sherman v. State, 234 Miss. 775, 108 So. 2d 205, 1959 Miss. LEXIS 554 (Miss. 1959).

Agent's right to a commission out of the money collected does not prevent the conversion thereof to his own use from being embezzlement. Sherman v. State, 234 Miss. 775, 108 So. 2d 205, 1959 Miss. LEXIS 554 (Miss. 1959).

In prosecution of bank cashier for embezzlement of $500.00 held to be no defense that he afterwards deposited $504.00 in view of the fact that his account was overdrawn. Richberger v. State, 90 Miss. 806, 44 So. 772, 1907 Miss. LEXIS 122 (Miss. 1907).

4. Election between charges.

In prosecution for embezzlement of $1,311.00 committed systematically at various times, action of district attorney securing instruction that defendant was guilty if he feloniously embezzled said money "to the amount of $25.00," was not an election to stand on one item. Davis v. State, 108 Miss. 710, 67 So. 178, 1914 Miss. LEXIS 264 (Miss. 1914).

Motion to compel state to elect on which peculiar item it would ask a conviction was properly overruled. Davis v. State, 108 Miss. 710, 67 So. 178, 1914 Miss. LEXIS 264 (Miss. 1914).

Where every act of embezzlement charged is proven, requiring state to elect on which act it would rely for conviction not reversible error. Starling v. State, 90 Miss. 255, 43 So. 952, 1907 Miss. LEXIS 98 (Miss. 1907).

State not required to elect on which act of embezzlement it will rely for conviction. Starling v. State, 90 Miss. 255, 43 So. 952, 1907 Miss. LEXIS 98 (Miss. 1907).

5. Proof.

Evidence was sufficient to support defendant's embezzlement conviction under Miss. Code Ann. § 97-23-19 as it was reasonable for a jury to infer defendant converted funds to defendant's own use when the evidence showed defendant failed to account for and to pay over money defendant was responsible for depositing in the bank as a manager of three stores. Cummings v. State, 58 So. 3d 715, 2011 Miss. App. LEXIS 196 (Miss. Ct. App. 2011).

In a case in which defendant appealed her conviction for violating Miss. Code Ann. § 97-23-19, she unsuccessfully argued that the verdict was not supported by the overwhelming weight of the evidence because too much weight was placed on the 86-year old victim's testimony and that the victim's testimony was riddled with inconsistencies and contradictions. The claim was an exaggeration not supported by the record. Barnes v. State, 30 So. 3d 313, 2010 Miss. LEXIS 104 (Miss. 2010).

Verdict finding defendant guilty of embezzlement was not contrary to the overwhelming weight of the evidence. Although the victim, who testified that she hired defendant to procure a truck for her from an automobile auction, repeatedly called defendant and attempted to meet defendant to pick up the truck, defendant never fulfilled his end of the agreement by procuring a truck for the victim, nor did defendant repay the victim any of the money entrusted to him as a down payment. Wilson v. State, 12 So. 3d 8, 2008 Miss. App. LEXIS 746 (Miss. Ct. App. 2008), cert. denied, 14 So. 3d 731, 2009 Miss. LEXIS 306 (Miss. 2009).

Lower court properly reversed a church deacon's embezzlement conviction under Miss. Code Ann. § 97-23-19 as the statute required that the victim be either an incorporated company or a private person and the church was operating as an unincorporated religious society under Miss. Code Ann. § 79-11-31. Coleman v. State, 947 So. 2d 878, 2006 Miss. LEXIS 681 (Miss. 2006).

Evidence was insufficient to sustain defendant's conviction for embezzlement from a limited liability company because Miss. Code Ann. § 97-23-19 did not apply to limited liability companies; it only applied to "incorporated companies" and "private persons." Champluvier v. State, 942 So. 2d 145, 2006 Miss. LEXIS 636 (Miss. 2006).

Defendant was properly convicted of embezzlement for converting casino money entrusted to him as a casino employee to his own personal use. Casino employees testified that defendant began his shift with $ 150,000 in his drawer, he left his station with six or seven bundles of one hundred dollar bills, he entered the restroom near his station with the money in a plastic bag, and a shortage of $ 80,000 was discovered when his cash drawer was subsequently opened. Bright v. State, 894 So. 2d 590, 2004 Miss. App. LEXIS 854 (Miss. Ct. App. 2004), cert. denied, 893 So. 2d 1061, 2005 Miss. LEXIS 136 (Miss. 2005).

Driver for a customer (and an accomplice), testified to placing two $100 bills in defendant's pocket, and that defendant, a supervisor for the furniture company, then loaded the unauthorized furniture onto the driver's truck, and the evidence established that as the driver tried to leave, the security guard for the furniture company found the furniture was not properly tagged, and an officer then recovered $100 bills from defendant, consistent with the driver's story; consequently, there was evidence in the record that was sufficient to support defendant's conviction for embezzlement. Jones v. State, 872 So. 2d 53, 2003 Miss. App. LEXIS 1152 (Miss. Ct. App. 2003).

Evidence was sufficient to support a conviction where there was testimony that (1) the defendant took a lawnmower with permission from the victim for the purpose of repairing it, (2) approximately three to four days after he picked up the lawnmower, he pawned it for $150, and (3) the defendant only told the manager of the pawn shop that the lawnmower was not his after the police placed a hold on the lawnmower. Bishop v. State, 755 So. 2d 1269, 2000 Miss. App. LEXIS 65 (Miss. Ct. App. 2000).

In a prosecution of a plant manager indicted for embezzling about 300 shirts belonging to a named corporation, of which defendant was an agent, clerk, servant, or officer, wherein defendant contended that a corporation other than the one named in the indictment was the owner of the shirts and his employer, best evidence rule did not preclude use of witness testimony to establish the status of the corporation set forth in the indictment. Bunkley v. State, 495 So. 2d 1, 1986 Miss. LEXIS 2593 (Miss. 1986).

The prosecution failed to meet its burden of proof that an escrow agent embezzled funds from the escrow account where, even though the escrow agent drew two checks on the escrow account for the purchase of an automobile, the prosecution offered no proof for whom the automobile was purchased, no title certificate was introduced, and no testimony was presented that the automobile was purchased in defendant's name. Cowart v. State, 349 So. 2d 506, 1977 Miss. LEXIS 2145 (Miss. 1977).

An agreement under which a service station business was the defendant's to be run as he saw fit, and the alleged victim of embezzlement would sell gasoline to the defendant at wholesale price, and the defendant would pay the alleged victim promptly each week when billed, created merely a debtor-creditor relationship rather than an agency, and the defendant who failed to make good on 3 checks made in payment of petroleum products sold to him by the alleged embezzlement victim, but returned because of insufficient funds, was not guilty of embezzlement, the element of agency or fiduciary relationship not having been established. Fairchild v. State, 258 So. 2d 254, 1972 Miss. LEXIS 1494 (Miss. 1972).

In a prosecution for embezzlement from a partnership testimony of defendant's wife as to a statement made in her presence to the defendant by the wife of one of the partners to the effect that they were fixing to frame the defendant was properly excluded as hearsay and was incompetent without the partner's consenting thereto. Barry v. State, 187 Miss. 221, 192 So. 841, 1940 Miss. LEXIS 210 (Miss. 1940).

Permitting the wife of a partner in a prosecution for embezzlement of funds of the partnership by the defendant employed as a salesman of such partnership to contradict defendant's proffered evidence that the wife made a statement that they were fixing to frame the defendant, which evidence itself was excluded as hearsay, was highly prejudicial, since it is not permissible to contradict a witness about an immaterial matter. Barry v. State, 187 Miss. 221, 192 So. 841, 1940 Miss. LEXIS 210 (Miss. 1940).

It was reversible error in a prosecution of a salesman for embezzlement of the funds of his employer, a partnership, to exclude the testimony of its customers to the effect that after defendant's alleged embezzlement, a representative of the partnership presented statements to such witnesses, that they informed the representatives that they had paid their bills by check, and that upon rechecking the representatives admitted that their bills had been paid. Barry v. State, 187 Miss. 221, 192 So. 841, 1940 Miss. LEXIS 210 (Miss. 1940).

Fiduciary relation must be proved. Lawson v. State, 125 Miss. 754, 88 So. 325, 1921 Miss. LEXIS 163 (Miss. 1921).

Conviction cannot be sustained, where no conversion was shown. Bell v. State, 110 Miss. 430, 70 So. 456, 1915 Miss. LEXIS 49 (Miss. 1915).

Cashier could not be convicted of embezzling funds in joint custody of himself and another in absence of evidence that he was the one who misappropriated them. Clark v. State, 109 Miss. 737, 69 So. 497, 1915 Miss. LEXIS 218 (Miss. 1915).

Evidence of the de facto existence of bank and performance of its function as such constituted sufficient proof of its corporate existence. Davis v. State, 108 Miss. 710, 67 So. 178, 1914 Miss. LEXIS 264 (Miss. 1914).

Indictment for embezzling funds belonging to corporation not sustained by proof that the funds belonged to a partnership. Hampton v. State, 99 Miss. 176, 54 So. 722, 1911 Miss. LEXIS 187 (Miss. 1911).

Defendants not guilty of embezzlement, where it was not shown they collected premiums they were alleged to have embezzled. State v. Russell, 98 Miss. 64, 53 So. 954, 1910 Miss. LEXIS 81 (Miss. 1910).

6. Instructions.

In her embezzlement trial, defendant's proferred instruction stated, in part, that good character could in itself be sufficient to generate in the jurors' minds reasonable doubt as to the guilt of defendant so as to require an acquittal, although without it the other evidence would be convincing of guilt. The instruction would have been an improper comment upon the weight of the testimony and the trial court did not err when it refused same. Montgomery v. State, 891 So. 2d 179, 2004 Miss. LEXIS 1374 (Miss. 2004).

Instructions in a prosecution of a salesman for embezzlement of the funds collected on behalf of a partnership by whom he was employed to the effect that the jury might convict him if they found beyond a reasonable doubt that he had embezzled all or any part, exceeding $25, of the funds alleged to have been embezzled, were erroneous and prejudicial, in that such instructions would permit the individual insurers to find him guilty of embezzlement of any one of numerous items without there being a unanimous agreement as to any one particular item. Barry v. State, 187 Miss. 221, 192 So. 841, 1940 Miss. LEXIS 210 (Miss. 1940).

A requested instruction that even if the jury should find that the books and accounts of the partnership, whose funds defendant was alleged to have embezzled, showed less credit to the account of its customers than were actually paid to the defendant, the jury could not convict the defendant unless it believed from the evidence beyond a reasonable doubt that the defendant himself embezzled money belonging to the partnership, should have been given. Barry v. State, 187 Miss. 221, 192 So. 841, 1940 Miss. LEXIS 210 (Miss. 1940).

Instruction that jury should try case on evidence and not on statement of attorney, if error, was harmless. Davis v. State, 108 Miss. 710, 67 So. 178, 1914 Miss. LEXIS 264 (Miss. 1914).

Instruction that a mere failure on defendant's part without explanation, to turn over to the express company the funds in his hands belonging to it, established guilt, was erroneous. Hampton v. State, 99 Miss. 176, 54 So. 722, 1911 Miss. LEXIS 187 (Miss. 1911).

7. Sentencing.

In an embezzlement case, a trial court erred in sentencing defendants because defendants' conduct could clearly fall under Miss. Code Ann. § 97-23-25 or Miss. Code Ann. § 97-23-19; the conduct was required to be treated as leniently as possible because a lesser punishment applied. Salts v. State, 2007 Miss. App. LEXIS 513 (Miss. Ct. App. Aug. 7, 2007), op. withdrawn, sub. op., 984 So. 2d 1050, 2008 Miss. App. LEXIS 199 (Miss. Ct. App. 2008).

Where defendant was convicted of embezzling $ 80,000 from the casino where he worked, his sentence of 10 years was within the statutory range. The trial court properly exercised its discretion in sentencing defendant. Bright v. State, 894 So. 2d 590, 2004 Miss. App. LEXIS 854 (Miss. Ct. App. 2004), cert. denied, 893 So. 2d 1061, 2005 Miss. LEXIS 136 (Miss. 2005).

8. Motion for directed verdict.

State failed to prove the elements of embezzlement in violation of Miss. Code Ann. § 97-23-19 beyond a reasonable doubt and thus the trial court erred in denying defendant's motion for a directed verdict; in order to prove embezzlement, the State had to provide evidence of the following: (1) a company owned the car in question, (2) the car was lawfully entrusted to defendant, and (3) defendant wrongfully converted the vehicle to his own use, and while the State established car ownership by the company given the vehicle identification number, the State did not prove that defendant was entrusted with the vehicle, given that (1) defendant did not have permission to take company vehicle off the lot just by being an employee of the company, (2) the car belonged to a different location where defendant was never employed, and (3) defendant did not possess a valid driver's license, which prohibited him from lawfully driving company vehicles as part of his job. At best, the evidence might have shown the actual theft of property, but it did not prove embezzlement, and the court reversed and rendered. Luckett v. State, 989 So. 2d 995, 2008 Miss. App. LEXIS 527 (Miss. Ct. App. 2008).

Trial court erred by denying defendant's motion for a directed verdict as there was insufficient evidence to find that defendant had embezzled funds from the church deacon under Miss. Code Ann. § 97-23-19; the deacon had no ownership rights in any portion of the embezzled funds and defendant should have been charged with larceny under Miss. Code Ann. § 97-17-4. Coleman v. State, 947 So. 2d 964, 2005 Miss. App. LEXIS 795 (Miss. Ct. App. 2005), aff'd, 947 So. 2d 878, 2006 Miss. LEXIS 681 (Miss. 2006).

Trial court did not commit reversible error in denying defendant's motion for directed verdict and motion for a new trial on the ground that the offense she allegedly committed constituted larceny and not embezzlement. Defendant, who the evidence showed took $15,000 from her employer by writing duplicate checks and depositing some checks in her own account, was in charge of running the day-to-day operations, she was the office manager and record keeper and was entrusted to write checks on behalf of the employer, make deposits and reconcile the bank statements; it was a classic case of embezzlement, Montgomery v. State, 891 So. 2d 179, 2004 Miss. LEXIS 1374 (Miss. 2004).

RESEARCH REFERENCES

ALR.

Nature of property or rights other than tangible chattels which may be subject of conversion. 44 A.L.R.2d 927.

Embezzlement by independent collector or collection agency working on commission or percentage. 56 A.L.R.2d 1156.

Criminal responsibility for embezzlement from corporation by stockholder owning entire beneficial interest. 83 A.L.R.2d 791.

Drawing of check on bank account of principal or employer payable to accused's creditor as constituting embezzlement. 88 A.L.R.2d 688.

When statute of limitations begins to run against criminal prosecution for embezzlement, fraud, false pretenses, or similar crimes. 77 A.L.R.3d 689.

Validity and construction of statute providing criminal penalties for failure of contractor who has received payment from owner to pay laborers or materialmen. 78 A.L.R.3d 563.

Embezzlement, larceny, false pretenses, or allied criminal fraud by a partner. 82 A.L.R.3d 822.

Am. Jur.

26 Am. Jur. 2d, Embezzlement §§ 1 et seq.

2 Am. Jur. Trials, Investigating Particular Crimes § 22 (embezzlement).

13 Am. Jur. Trials, Defending Minor Felony Cases §§ 1 et seq.

CJS.

29A C.J.S., Embezzlement §§ 23 et seq.

§ 97-23-21. Embezzlement; evidence of debt negotiable by delivery but not delivered.

Every officer, clerk, agent, or other person mentioned in Section 97-23-19 who shall embezzle or fraudulently secrete, conceal, or convert to his own use, by putting the same in circulation, any evidence of debt negotiable by delivery, but not delivered or issued as a valid instrument, shall be guilty of embezzlement, and punished, on conviction, as provided in the last section.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 4(60); 1857, ch. 64, art. 83; 1871, § 2548; 1880, § 2783; 1892, § 1059; 1906, § 1137; Hemingway's 1917, § 865; 1930, § 890; 1942, § 2116.

Cross References — White-collar crime investigations, see § 7-5-59.
Description of property in indictment for embezzlement, see § 99-7-31.

JUDICIAL DECISIONS

1. In general.

An indictment charging embezzlement of gasoline credit cards is not void for failing to state the value of the cards, but where the value of the embezzled property is neither stated nor proved the offense is punishable as petit larceny and not as a felony. Bell v. State, 251 Miss. 511, 170 So. 2d 428, 1965 Miss. LEXIS 877 (Miss. 1965).

RESEARCH REFERENCES

Am. Jur.

26 Am. Jur. 2d, Embezzlement §§ 1 et seq.

2 Am. Jur. Trials, Investigating Particular Crimes § 22 (embezzlement).

CJS.

29A C.J.S., Embezzlement §§ 23 et seq.

§ 97-23-23. Embezzlement; buying or receiving embezzled goods.

Every person who shall buy or in any way receive any money, goods, rights in action, or other valuable security, effects, or property, knowing the same to have been embezzled, taken or secreted contrary to law, on conviction thereof, shall suffer the penalty provided in Section 97-17-70, for receiving stolen property.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 4(61); 1857, ch. 64, art. 84; 1871, § 2549; 1880, § 2784; 1892, § 1060; 1906, § 1138; Hemingway's 1917, § 866; 1930, § 891; 1942, § 2117; Laws, 1993, ch. 359, § 3, eff from and after July 1, 1993.

Cross References — White-collar crime investigations, see § 7-5-59.
Search warrant for embezzled goods, see § 99-15-11.

JUDICIAL DECISIONS

1. In general.

Defendant securing from cashier of payee bank, where his draft was dishonored, another draft drawn by it on a third bank payable to bank which cashed first draft held not guilty under this section [Code 1942, § 2117]. Lamb v. State, 118 Miss. 693, 79 So. 849, 1918 Miss. LEXIS 122 (Miss. 1918).

RESEARCH REFERENCES

Am. Jur.

66 Am. Jur. 2d, Receiving and Transporting Stolen Property §§ 1 et seq.

2 Am. Jur. Trials, Investigating Particular Crimes § 22 (embezzlement).

CJS.

29A C.J.S., Embezzlement § 15.

§ 97-23-25. Embezzlement; property held in trust or received on contract.

If any person shall fraudulently appropriate personal property or money which has been delivered to him on deposit, or to be carried or repaired, or on any other contract or trust by which he was bound to deliver or return the thing received or its proceeds, on conviction, he shall be punished by imprisonment in the penitentiary not more than ten years, or be fined not more than one thousand dollars and imprisoned in the county jail not more than one year, or either.

HISTORY: Codes, 1880, § 2785; 1892, § 1061; 1906, § 1139; Hemingway's 1917, § 867; 1930, § 892; 1942, § 2118.

Cross References — White-collar crime investigations, see § 7-5-59.
Description of property in indictment for embezzlement, see § 99-7-31.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Indictment, generally.
3. —Incorrect date or failure to state date.
4. Admissibility of Evidence.
5. Sentencing.
6. Jury instructions.

1. In general.

Defendant failed to notify a business that rented defendant of goods of two changes of address, in violation of the rental agreement; a jury could infer that defendant formed the requisite intent to embezzle by contract after defendant's girlfriend destroyed the goods, and defendant moved, leaving no forwarding address despite the girlfriend's indication that she wanted to pay for the goods. Crump v. State, 962 So. 2d 154, 2007 Miss. App. LEXIS 511 (Miss. Ct. App. 2007).

State proved beyond a reasonable doubt that: (1) a fiduciary relationship existed between defendant (a car salesman), and the dealership; (2) money was paid by a customer to defendant in the context of that fiduciary relationship; and (3) defendant converted said monies to his own use. Further, although it was not an action in contract, the jury could have reasonably determined that a contract existed under § 75-2-201 and that defendant was obligated to deliver the subject down payment to the dealership; therefore, the trial court was correct in denying defendant's motions for directed verdict and judgment notwithstanding the verdict, and request for a peremptory instruction. Bell v. State, 910 So. 2d 640, 2005 Miss. App. LEXIS 159 (Miss. Ct. App. 2005).

Person who retains possession of rental automobile obtained through use of false name on rental agreement may be convicted of embezzlement. Ruffin v. State, 482 So. 2d 231, 1986 Miss. LEXIS 2344 (Miss. 1986).

Where the defendant received money pursuant to a contract under which he was required to build a home for two individuals, the money received by the defendant belonged to him, and notwithstanding his failure to complete the construction of the home he could not be properly indicted and convicted for embezzlement under section 97-23-25. Shelley v. State, 447 So. 2d 124, 1984 Miss. LEXIS 1665 (Miss. 1984).

In a prosecution charging an insurance agent with embezzling money given him in trust for the purpose of securing fire insurance on a dwelling, it was reversible error to admit evidence that defendant's co-employee had used a postage meter to backdate an envelope addressed to the company from which the fire insurance was sought where the indictment did not charge a conspiracy and there was no proof thereof; the backdating was not done in the presence of the agent and there was no testimony or evidence to show that the backdating was done at defendant's direction or that he had knowledge of the act. McBride v. State, 366 So. 2d 666, 1979 Miss. LEXIS 2208 (Miss. 1979).

Even though the sentence under this section was suspended, once the court elected to sentence the defendant to imprisonment in the state penitentiary, it could not under the guise of a condition of the suspension impose the additional sentence of paying a $1,000 fine. Bass v. State, 328 So. 2d 665, 1976 Miss. LEXIS 1812 (Miss. 1976).

When the words "any person" at the beginning of this section [Code 1942 § 2118] are considered in relation to the remainder of the words of the section, it is apparent from the entirety that the type of possession referred to is none other than a trust, and it necessarily follows that a trust or fiduciary relationship must be embodied in the charge of the indictment. Grantham v. State, 284 So. 2d 523, 1973 Miss. LEXIS 1264 (Miss. 1973).

That a cattle purchaser had taken cattle purchased from the premises of the seller without paying for them as allegedly required by the contract, the purchaser testifying that he was buying on an open account as he had done in the past, totally failed to prove a wrongful conversion or appropriation of another's property lawfully possessed by the defendant, but proved only that the defendant forced his credit upon the association, not commendable perhaps, but nevertheless not constituting the crime of embezzlement. Grantham v. State, 284 So. 2d 523, 1973 Miss. LEXIS 1264 (Miss. 1973).

2. Indictment, generally.

Defendant was not properly indicted and convicted under this section, and his conviction of embezzlement under that section would be reversed, where he and the alleged victims entered into a clearly written and executed contract for the construction of a house, where the victims, who were intelligent people as evidence by their employment, freely gave their money completely to defendant in four different installments even though no work on the house was in progress after the second installment, and where the money belonged to defendant once he received it even though he did not produce the proceeds, in that those proceeds were for the completion of the house under the civil contract. Shelley v. State, 447 So. 2d 124, 1984 Miss. LEXIS 1665 (Miss. 1984).

An indictment for the crime of embezzlement must contain the words of the statute or use their equivalent. Grantham v. State, 284 So. 2d 523, 1973 Miss. LEXIS 1264 (Miss. 1973).

In prosecution for embezzlement of quantity of beer, the indictment was good in that it sufficiently described the contract under which defendant obtained delivery of beer, and it sufficiently informed the accused of the nature of the accusation and the description of the property was sufficient and it sufficiently informed the accused of acts made unlawful by statute with which he was charged. Davis v. State, 228 Miss. 441, 87 So. 2d 900, 1956 Miss. LEXIS 531 (Miss. 1956), cert. denied, 352 U.S. 981, 77 S. Ct. 381, 1 L. Ed. 2d 365, 1957 U.S. LEXIS 1442 (U.S. 1957).

Indictment for embezzlement does not have to set forth evidence, but only enough to inform defendant sufficiently of charge therein laid against him. State v. May, 208 Miss. 862, 45 So. 2d 728, 1950 Miss. LEXIS 306 (Miss. 1950).

3. —Incorrect date or failure to state date.

Indictment for embezzlement under this section [Code 1942, § 2118], is not invalid because it charges that the alleged crime was committed on certain date and indictment was returned on that same date in view of Code 1942, § 2451, specifically providing that where time is not of essence of offense stating of time imperfectly will not make indictment insufficient. State v. May, 208 Miss. 862, 45 So. 2d 728, 1950 Miss. LEXIS 306 (Miss. 1950).

Indictment for embezzlement of money received on sale of automobile by agent of seller is not demurrable for failure to state date of alleged sale by agent or name of person to whom automobile was alleged to have been sold. State v. May, 208 Miss. 862, 45 So. 2d 728, 1950 Miss. LEXIS 306 (Miss. 1950).

4. Admissibility of Evidence.

Defendant, tried for embezzlement, was employed by the owner for approximately nine months and the owner testified that he had become familiar with defendant's handwriting during said period. By virtue of his familiarity with defendant's handwriting, the owner was fully qualified to offer his opinion as to whether or not the writing was in fact defendant's signature; such testimony was rationally based upon his perception, was helpful in making a determination of a fact in issue, was not based on scientific, technical, or other specialized knowledge within the scope of Miss. R. Evid. 702, and it therefore met the requirements for both Miss. R. Evid. 701 and 901(b)(2). Bell v. State, 910 So. 2d 640, 2005 Miss. App. LEXIS 159 (Miss. Ct. App. 2005).

5. Sentencing.

In an embezzlement case, a trial court erred in sentencing defendants because defendants' conduct could clearly fall under Miss. Code Ann. § 97-23-25 or Miss. Code Ann. § 97-23-19; the conduct was required to be treated as leniently as possible because a lesser punishment applied. Salts v. State, 2007 Miss. App. LEXIS 513 (Miss. Ct. App. Aug. 7, 2007), op. withdrawn, sub. op., 984 So. 2d 1050, 2008 Miss. App. LEXIS 199 (Miss. Ct. App. 2008).

6. Jury instructions.

Court properly refused to instruct the jury that specific intent to defraud was required to prove embezzlement because the jury instruction stated that defendants were charged with embezzlement, and the jury should find defendants guilty if it found beyond a reasonable doubt that they had "fraudulently appropriated" various sums of money. Even without a separate definition, that language necessarily implied that defendants had intentionally defrauded the victims. Salts v. State, 984 So. 2d 1050, 2008 Miss. App. LEXIS 199 (Miss. Ct. App.), cert. denied, 984 So. 2d 277, 2008 Miss. LEXIS 334 (Miss. 2008).

RESEARCH REFERENCES

ALR.

Embezzlement by independent collector or collection agency working on commission or percentage. 56 A.L.R.2d 1156.

Am. Jur.

26 Am. Jur. 2d, Embezzlement §§ 20 et seq.

2 Am. Jur. Trials, Investigating Particular Crimes § 22 (embezzlement).

§ 97-23-27. Embezzlement; property borrowed or hired.

The fraudulent appropriation of certain specific property by one to whom it has been delivered on a contract or loan for use, or of letting and hiring, after the time at which, according to the contract, the right of use acquired thereby has ceased, or before that time by a disposition not authorized by the contract, shall be an offense within the meaning of Section 97-23-25 and shall be punished as therein prescribed.

HISTORY: Codes, 1880, § 2786; 1892, § 1062; 1906, § 1140; Hemingway's 1917, § 868; 1930, § 893; 1942, § 2119.

Cross References — White-collar crime investigations, see § 7-5-59.
Description of property in indictment for embezzlement, see § 99-7-31.

JUDICIAL DECISIONS

1. In general.

Indictment for embezzling automobile hired from rental agency, not averring place and time of redelivery, held insufficient. Touchstone v. State, 159 Miss. 356, 132 So. 340, 1931 Miss. LEXIS 60 (Miss. 1931).

RESEARCH REFERENCES

Am. Jur.

26 Am. Jur. 2d, Embezzlement §§ 20 et seq.

2 Am. Jur. Trials, Investigating Particular Crimes § 22 (embezzlement).

CJS.

29A C.J.S., Embezzlement § 15.

§ 97-23-29. Enticing away servant or lessee without written consent; provisions applicable to minors.

If any person shall wilfully interfere with, entice away, or who shall knowingly employ, or who shall in any manner induce a laborer or renter who has contracted with another person for a specified time to leave his employer or the leased premises, before the expiration of his contract without the consent of the employer or landlord in writing signed by said landlord or employer under or with whom said laborer had first contracted, he shall, upon conviction, be fined not less than twenty-five dollars nor more than one hundred dollars, and in addition shall be liable to the employer or landlord for all advances made by him to said renter or laborer by virtue of his contract with said renter or laborer, and for all damages which he may have sustained by reason thereof. The provisions of this section shall apply to minors under contract made by a parent or guardian.

HISTORY: Codes, 1892, § 1068; 1906, § 1146; Hemingway's 1917, § 874; 1930, § 900; 1942, § 2129; Laws, 1924, ch. 160; Laws, 1928, ch. 292.

Cross References — Proceedings when tenants desert premises, see § 89-7-49.
Enticing children for employment, see § 97-5-7.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Affidavit.
3. Venue of prosecution.
4. When statute violated.
5. —Contracting with one who has abandoned former relation.
6. Actions for damages.

1. In general.

This section [Code 1942, § 2129] must be construed consistently with Const. 1890, § 15, and 13th Amend. U.S. Const. Hill v. Duckworth, 155 Miss. 484, 124 So. 641, 1929 Miss. LEXIS 315 (Miss. 1929).

Person under contract to make crop for another is "laborer" within the law forbidding interference with employment. Armstrong v. Bishop, 151 Miss. 353, 117 So. 512, 1928 Miss. LEXIS 287 (Miss. 1928).

Law forbidding interference with employment must be strictly construed in favor of liberty of contract and person. Thompson v. Box, 147 Miss. 1, 112 So. 597, 1927 Miss. LEXIS 295 (Miss. 1927).

This section [Code 1942, § 2129] is a legitimate exercise of the police power of the state. State v. Hurdle, 113 Miss. 736, 74 So. 681, 1917 Miss. LEXIS 157 (Miss. 1917).

Statute [Code 1942, § 2129] is highly penal, and the plaintiff, to recover, must be without fault. Mahoney v. McNeil, 77 Miss. 406, 27 So. 528, 1899 Miss. LEXIS 77 (Miss. 1899).

At common law if any person hired or retained another's servant, that other had an action for damages against both the hirer or retainer and the servant. This statute enforces this common-law right. Hoole v. Dorroh, 75 Miss. 257, 22 So. 829, 1897 Miss. LEXIS 119 (Miss. 1897).

This statute [Code 1942, § 2129] is not class legislation. Hoole v. Dorroh, 75 Miss. 257, 22 So. 829, 1897 Miss. LEXIS 119 (Miss. 1897).

This statute [Code 1942, § 2129] is not a statute for the collection of debts, and does not embrace debts due to the employer or landlord. Chrestman v. Russell, 73 Miss. 452, 18 So. 656, 1895 Miss. LEXIS 93 (Miss. 1895).

2. Affidavit.

An affidavit alleging the enticing away and employment of a person who had contracted with another, charges no offense, where it omits to state that the person enticed away was a laborer, or that the matter complained of was without the consent of the employer. Jackson v. State, 13 So. 935 (Miss. 1893).

3. Venue of prosecution.

In a prosecution under this section [Code 1942, § 2129] venue must be laid at the place of the second hiring. King v. State, 83 Miss. 375, 35 So. 691, 1903 Miss. LEXIS 55 (Miss. 1903).

4. When statute violated.

Understanding that former employer had released employee held insufficient, within law requiring employer's consent in writing before another can employ. Armstrong v. Bishop, 151 Miss. 353, 117 So. 512, 1928 Miss. LEXIS 287 (Miss. 1928).

In determining status of person under contract to make a crop, date of expiration of contract is implied as that necessary to make a crop. Armstrong v. Bishop, 151 Miss. 353, 117 So. 512, 1928 Miss. LEXIS 287 (Miss. 1928).

In order to recover for a violation of this section [Code 1942, § 2129] the employment must have been made with actual knowledge of the existing contract. Beale v. Yazoo Yarn Mill, 125 Miss. 807, 88 So. 411, 1921 Miss. LEXIS 169 (Miss. 1921); Shilling v. State, 143 Miss. 709, 109 So. 737, 1926 Miss. LEXIS 312 (Miss. 1926).

Instruction on good faith as defense to charge of wrongful hiring held erroneously refused. Beale v. Yazoo Yarn Mill, 125 Miss. 807, 88 So. 411, 1921 Miss. LEXIS 169 (Miss. 1921).

Defendant enticing laborer away from indefinite employment did not violate statute [Code 1942, § 2129]. Goolsby v. State, 98 Miss. 702, 54 So. 155, 1910 Miss. LEXIS 111 (Miss. 1910).

Where one who was defendant's tenant in 1905 contracted with plaintiff to work land for him in 1906, but never went on the land and refused to perform his contract, and defendant did nothing to prevent him, defendant not become liable by permitting the tenant to occupy another piece of land in the spring of 1906. Alford v. Pegues, 92 Miss. 558, 46 So. 76, 1908 Miss. LEXIS 211 (Miss. 1908).

Where defendant rented land to one without knowing that he was plaintiff's renter, and upon being so informed tried to get the renter to go back to plaintiff, defendant is not liable. Sneed v. Gilman, 44 So. 830 (Miss. 1907).

Where the servant was arrested and agreed to return to his employer if the case was dismissed and then was seized and carried off by defendant, a conviction was proper. Gregory v. State, 42 So. 168 (Miss. 1906).

Failure of landlord to furnish tenant meat and clothing insufficient to justify tenant in abandoning his lease, unless landlord under legal obligation to do so, and defendant employing him knowing of lease, was liable. Petty v. Leggett, 38 So. 549 (Miss. 1905).

Prior to the addition of the last sentence of the above section [Code 1942, § 2129], it was held that enticing away of an infant servant whose mother had made a contract for her services to another for a year is not an offense. State v. Richardson, 86 Miss. 439, 38 So. 497 (Miss. 1905).

This section [Code 1942, § 2129] is not violated by a tenant who merely obtains advances from his landlord on pretense of going to certain places on business, and who leaves the premises and does not return. Ex parte Harris, 85 Miss. 4, 37 So. 505, 1904 Miss. LEXIS 103 (Miss. 1904).

Under this section [Code 1942, § 2129] one cannot be convicted who has never actually entered upon the service, or gone upon the farm of his alleged employer. Hendricks v. State, 79 Miss. 368, 30 So. 708, 1901 Miss. LEXIS 65 (Miss. 1901).

A laborer who has contracted in writing to work on shares who has never actually entered upon the service cannot be convicted under § 1068, Code of 1892, even as amended by the laws of 1900 (p. 140) (Code 1906, § 1146). Hendricks v. State, 79 Miss. 368, 30 So. 708, 1901 Miss. LEXIS 65 (Miss. 1901).

In an action under this section [Code 1942, § 2129] the defendant is liable where he employs a laborer before the expiration of his term of service without the consent of his employer or landlord, whether the contract with the landlord has been breached or not. Armistead v. Chatters, 71 Miss. 509, 15 So. 39, 1893 Miss. LEXIS 69 (Miss. 1893), overruled, Thompson v. Box, 147 Miss. 1, 112 So. 597, 1927 Miss. LEXIS 295 (Miss. 1927).

5. —Contracting with one who has abandoned former relation.

Laws 1928, ch. 292 has no application to employment of tenant theretofore abandoning contract. Hill v. Duckworth, 155 Miss. 484, 124 So. 641, 1929 Miss. LEXIS 315 (Miss. 1929).

Third person may lawfully employ laborer or renter theretofore breaching contract without incurring liability to original landlord. Hill v. Duckworth, 155 Miss. 484, 124 So. 641, 1929 Miss. LEXIS 315 (Miss. 1929).

Conviction cannot be had for enticing away, or employing laborer or renter already having abandoned his contract; evidence held insufficient to sustain conviction. Waldrup v. State, 154 Miss. 646, 122 So. 771, 1929 Miss. LEXIS 174 (Miss. 1929).

Negro woman negotiating with another before harvesting crops had not left employment within law forbidding interference therewith. Armstrong v. Bishop, 151 Miss. 353, 117 So. 512, 1928 Miss. LEXIS 287 (Miss. 1928).

Abandonment by a laborer of former contract authorizes re-employment by another. Thompson v. Box, 147 Miss. 1, 112 So. 597, 1927 Miss. LEXIS 295 (Miss. 1927).

Person contracting with laborers, believing they had abandoned original contract, held not liable for statutory penalty. Thompson v. Box, 147 Miss. 1, 112 So. 597, 1927 Miss. LEXIS 295 (Miss. 1927).

Mere hiring of tenant who has broken his contract not a violation of this section [Code 1942, § 2129]. Evans v. State, 121 Miss. 252, 83 So. 167, 1919 Miss. LEXIS 159 (Miss. 1919).

Laws of 1900, ch. 102, does not compel a renter to fulfill the contract, except by penalties for abandonment, nor prevent him from leasing land from another. Sneed v. Gilman, 44 So. 830 (Miss. 1907).

Whether the cause for which the tenant abandoned the premises was sufficient was a question of law, and not a question of fact for the jury. Petty v. Leggett, 38 So. 549 (Miss. 1905).

The mere employment of a servant after he had left his former master is not sufficient to sustain a conviction under the statute. Jackson v. State, 16 So. 299 (Miss. 1894).

6. Actions for damages.

An action to recover damages for inducing an automobile dealership to violate the terms of its premises lease, although erroneously brought under this section, which was enacted to protect the farmer-sharecropper relationship, was nevertheless proper since the declaration set out sufficient allegations to charge a common law cause of action based on willfull interference with contract; however, an award of punitive damages was improper, since only compensatory damages are authorized by this section and since the parties had confined recovery to that permitted hereunder. Cranford v. Shelton, 378 So. 2d 652, 1980 Miss. LEXIS 1813 (Miss. 1980).

Right of the landlord to sue for damages not dependent on conviction of the crime of enticing away. Wheeler v. Pannell, 96 Miss. 382, 51 So. 598, 1909 Miss. LEXIS 62 (Miss. 1909).

Landlord suing one for enticing away his tenant for advances made tenant on faith of the contract, may not recover from advances made to the tenant for completion of the crop under a prior contract of letting. Wheeler v. Pannell, 96 Miss. 382, 51 So. 598, 1909 Miss. LEXIS 62 (Miss. 1909).

The laws of 1900 (p. 140) repealed the double damages allowed by this section [Code 1942, § 2129] under the operation of § 61 of the Constitution of 1890. Nations v. Lovejoy, 80 Miss. 401, 31 So. 811, 1902 Miss. LEXIS 259 (Miss. 1902).

A plaintiff in a suit under § 1068, Code 1892, could not recover double damages when, pending his suit, another statute (Laws 1900, p. 140) had limited his recovery to a less amount. Nations v. Lovejoy, 80 Miss. 401, 31 So. 811, 1902 Miss. LEXIS 259 (Miss. 1902).

Plaintiff suing under this statute must show damages. Hoole v. Dorroh, 75 Miss. 257, 22 So. 829, 1897 Miss. LEXIS 119 (Miss. 1897).

RESEARCH REFERENCES

ALR.

Punitive damages for interference with contract or business relationship. 44 A.L.R.4th 1078.

Am. Jur.

44B Am. Jur. 2d, Interference §§ 44 et seq.

17 Am. Jur. Proof of Facts 2d 517, Tortious Interference with at-will Business Relationship.

25 Am. Jur. Proof of Facts 2d 725, Tortious Deprivation of Former Employer's Customers and Employees.

41 Am. Jur. Proof of Facts 2d 393, Tortious Interference with Real Estate Broker's Business Relationship with Seller.

50 Am. Jur. Proof of Facts 2d 455, Tortious Interference with Employment Relationship.

CJS.

30 C.J.S., Employer-Employee Relationship §§ 280-283.

Law Reviews.

Walker, Common Law Protection of Economic Expectancies: "Business Torts" in Mississippi. 50 Miss. L. J. 335, March 1979.

§ 97-23-31. Insurance; acting as agent for company not complying with law.

Any person who shall do or perform any of the acts or things mentioned in the laws governing insurance companies, the doing or performing of which is there provided, shall constitute such person the agent of the company, for any insurance company not organized under or incorporated by the laws of this state, without such company having first complied with the requirements of the laws of this state or having received the certificate of authority from the commissioner of insurance, as required by law, shall be guilty of a misdemeanor, and, on conviction, be fined five hundred dollars and be imprisoned in the county jail not exceeding twelve months, or by either; but the penalties of this section shall not apply to an adjuster of a loss, if the insurance could not have been obtained from a company which had complied with the laws of this state, or if the insurance was given at a rate fully one-half of one per centum less than that charged by such companies.

HISTORY: Codes, 1857, ch. 35, art. 63; 1871, § 2453; 1880, § 1086; 1892, § 1170; 1906, § 1248; Hemingway's 1917, § 978; 1930, § 1006; 1942, § 2236.

Cross References — Agents of nonadmitted insurance companies, see §§ 83-21-17 et seq.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

Mississippi statutory scheme pertaining to insurance carriers and agents, embodies in §§ 83-5-7, 83-17-103[Repealed], 83-17-105[Repealed], and 97-23-31, allegedly violated by defendants, met 3 criteria for laws to regulate "business of insurance," being (1) whether practice has effect of transferring or spreading a policy holder's risk, (2) whether practice is an integral part of policy relationship between insurer and insured, and (3) whether practice is limited to entities within insurance industry; therefore there was possibility of a valid state law claim based on Mississippi insurance regulatory statutes and/or fraud in the inducement against one of defendants who was insurance agent; accordingly, defendant was not nominal or fraudulently joined party for purposes of removal jurisdiction. Smith v. Arkansas Blue Cross & Blue Shield, 781 F. Supp. 1159, 1991 U.S. Dist. LEXIS 19434 (N.D. Miss. 1991).

One transmitting application, receiving and delivering policy, and collecting and transmitting premium to a broker was an agent within statute, though not authorized to solicit business. Cain v. State, 103 Miss. 701, 60 So. 731, 1912 Miss. LEXIS 219 (Miss. 1912).

Indictment charging defendant "did unlawfully assume to act as an insurance agent" was fatally defective for failure to specify particular unlawful act charged. Fikes v. State, 87 Miss. 251, 39 So. 783, 1905 Miss. LEXIS 136 (Miss. 1905).

Testimony of state insurance commissioner and certified copy of records of his office was competent and conclusive on question of whether company for which defendant was soliciting insurance had been permitted to do business in state. Fikes v. State, 87 Miss. 251, 39 So. 783, 1905 Miss. LEXIS 136 (Miss. 1905).

The statute is valid and not in conflict with either the state or federal Constitution. Moses v. State, 65 Miss. 56, 3 So. 140, 1887 Miss. LEXIS 14 (Miss. 1887), writ of error dismissed, 145 U.S. 647, 12 S. Ct. 985, 36 L. Ed. 851, 1891 U.S. LEXIS 3095 (U.S. 1891).

§ 97-23-33. Interference with exercise of lawful trade or calling by printing or distributing of matter, etc.

If any person shall wilfully and maliciously print, circulate or distribute, cause to be printed, circulated or distributed, or assist in printing, circulating or distributing, in any form whatever, any matter, the purpose and design of the contents thereof being to wilfully and maliciously interfere with, or prevent another from exercising a lawful trade or calling, or engaging in a lawful business, or engaging in lawful use and enjoyment of his property, he shall be guilty of a misdemeanor and upon conviction thereof shall be punished by imprisonment for not more than six (6) months in the county jail or be fined not more than five hundred dollars ($500.00) or both.

HISTORY: Codes, 1942, § 2236.5; Laws, 1964, ch. 344, eff from and after passage (approved March 3, 1964).

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

ALR.

Liability of one who induces or causes third person not to enter into or continue a business relation with another. 9 A.L.R.2d 228.

Liability for interference with at will business relationship. 5 A.L.R.4th 9.

Am. Jur.

44B Am. Jur. 2d, Interference §§ 47 et seq.

18 Am. Jur. Proof of Facts 2d 265, Unfair Competition – Appropriation of Competitor's Advertising Matter, Methods, or Slogan.

41 Am. Jur. Proof of Facts 2d 393, Tortious Interference with Real Estate Broker's Business Relationship with Seller.

50 Am. Jur. Proof of Facts 2d 455, Tortious Interference with Employment Relationship.

§ 97-23-35. Newspapers and periodicals to print names of their editors.

Newspapers and periodicals published in this state, for regular distribution through the mails or otherwise, shall print at the top of the editorial page of said publication the full name of its chief editor, the assistant editor, if any, or the person or persons directly responsible for the editorial utterances of said publication. The owner or owners of any newspaper or periodical published in this state in violation of this section, shall be guilty of a misdemeanor and upon conviction, shall be fined not more than twenty-five dollars for each offense.

HISTORY: Codes, Hemingway's 1917, §§ 1023, 1024; 1930, § 1055; 1942, § 2287; Laws, 1912, ch. 156.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 97-23-37. Oleomargarine and other imitation food to be branded.

A person who sells or manufactures, exposes or offers for sale as an article of food, any oleomargarine or other substance in imitation of any article of food, without disclosing the imitation by a suitable and plainly visible mark or brand, indicating and naming what the substance really is, shall be guilty of a misdemeanor, and, on conviction, shall be fined not less than ten dollars nor more than one hundred dollars, or be imprisoned in the county jail not exceeding one month, or both.

HISTORY: Codes, 1892, § 1242; 1906, § 1316; Hemingway's 1917, § 1049; 1930, § 1081; 1942, § 2314; Laws, 1892, p. 85.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

ALR.

Federal pre-emption of state food labeling legislation or regulation. 79 A.L.R. Fed. 181.

Validity, under Commerce Clause (Art I, § 8, Cl 3), of state statutes regulating labeling of food. 79 A.L.R. Fed. 246.

Am. Jur.

35A Am. Jur. 2d, Food §§ 39 et seq.

CJS.

36A C.J.S., Food §§ 25 et seq.

§ 97-23-39. Preventing employment by force or violence; penalty.

It shall be unlawful for any person by the use of force or violence, or threat of the use of force or violence, to prevent or to attempt to prevent any person from engaging in any lawful vocation within this state. Any person guilty of violating this section shall be deemed guilty of a felony and, upon conviction thereof, shall be fined in the sum of not more than five hundred dollars ($500.00) or imprisoned in the county jail not more than six months, or both, or in the state penitentiary not more than two (2) years.

HISTORY: Codes, 1942, § 2126; Laws, 1942, ch. 323.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

RESEARCH REFERENCES

ALR.

Punitive damages for interference with contract or business relationship. 44 A.L.R.4th 1078.

Am. Jur.

44B Am. Jur. 2d, Interference §§ 19, 47 et seq.

50 Am. Jur. Proof of Facts 2d 455, Tortious Interference with Employment Relationship.

13 Am. Jur. Trials, Defending Minor Felony Cases §§ 1 et seq.

§ 97-23-41. Preventing employment by force or violence; conspiracy.

It shall be unlawful for any two or more persons to conspire together to use force or violence, or threats thereof, to prevent any person or persons from engaging in any lawful vocation or work in this state, and it shall be unlawful for any two or more persons in furtherance of such conspiracy to assemble or gather together at any place where a labor dispute exists or anywhere in this state for the purpose of carrying such unlawful conspiracy into effect. Any person violating this section, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars ($500.00) or imprisonment in the county jail not more than six months, or both, or in the state penitentiary not more than two years.

The term “labor dispute” as used in this section shall include any controversy between an employer and two (2) or more of his employees concerning the terms or conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment.

HISTORY: Codes, 1942, §§ 2127, 2128; Laws, 1942, ch. 323.

Cross References — Conspiracy, generally, see § 97-1-1.
Conspiracy for unlawful restraint or boycott of trade or business, see § 97-23-85.

RESEARCH REFERENCES

ALR.

Combination of separate plants or units of same employer as single bargaining unit. 12 A.L.R.3d 787.

Multiemployer group as appropriate bargaining unit under Labor Relations Act. 12 A.L.R.3d 805.

State criminal prosecutions of union officer or member for specific physical threats to employer’s property or person, in connection with labor dispute – modern cases. 43 A.L.R.4th 1141.

Punitive damages for interference with contract or business relationship. 44 A.L.R.4th 1078.

Am. Jur.

50 Am. Jur. Proof of Facts 2d 455, Tortious Interference with Employment Relationship.

CJS.

51A C.J.S., Labor Relations §§ 442, 443.

§ 97-23-43. Profession; practicing without license.

If any person shall practice as an attorney and counsellor-at-law, or shall practice as a physician or surgeon, or shall practice as a dentist, or shall practice as a pharmacist, without having first been examined and obtained a license as required by law, he shall, on conviction, of the first offense, be punished by a fine of not less than one hundred ($100.00) dollars or more than two hundred ($200.00) dollars or by imprisonment in the county jail not less than three months or more than twelve months or both; and such person, upon conviction of the second offense against this section, shall be punished by a fine of not less than two hundred ($200.00) dollars or more than five hundred ($500.00) dollars or by imprisonment in the penitentiary not less than one year or more than two years; and such person, upon conviction of any succeeding offense, shall be punished in the discretion of the court; provided, however, that such punishment shall in no case exceed the payment of a fine of five thousand dollars ($5,000.00) or imprisonment for five years.

HISTORY: Codes, Hutchinson's § 1848, ch. 26, art. 3(4); 1857, ch. 9, art. 3; 1871, § 2246; 1880, § 2398; 1892, § 1258; 1906, § 1334; Hemingway's 1917, § 1068; 1930, § 1099; 1942, § 2332; Laws, 1932, ch. 270.

Cross References — Failure to procure license required for persons liable for privilege taxes, see § 27-15-215.

Penalty for practicing architecture without certificate, see § 73-1-25.

Unlawful practice of law without license, see § 73-3-55.

Unauthorized practice of law, see § 73-3-55.

Penalties for practicing dentistry illegally, see § 73-9-57.

Unlawful practice of engineering, see § 73-13-39.

Physicians' duty to obtain license, see § 73-25-1.

Penalties for practicing as certified public accountant without license, see § 73-33-13.

Unlicensed practice of profession, generally, see §§ 73-51-1 et seq.

Penalty for failure to obtain boxing or wrestling license, see § 75-75-117.

Insurance agent obtaining license, see § 83-17-5.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Professions within statute.
3. Indictment.

1. In general.

A statute of this sort does not contravene U. S. Const., amend. 14, but is within the police power of the state. State v. Tucker, 102 Miss. 517, 59 So. 826, 1912 Miss. LEXIS 82 (Miss. 1912).

2. Professions within statute.

A chancery clerk who, through the exercise of discretion and the use of her own knowledge and judgment, drew deeds, deeds of trust, bills of sale, and title certificates to real property was not a mere scrivener but was engaged in the unlawful practice of law, and an injunction was properly granted to restrain her from continuing these activities. Darby v. Mississippi State Board of Bar Admissions, 185 So. 2d 684, 1966 Miss. LEXIS 1533 (Miss. 1966).

The element of compensation for legal services performed by one not licensed to practice law may be a factor in determining whether specified conduct is unlawful, but it is not controlling, and the character of the service and its relation to the public interest determines its classification, not whether compensation is charged. Darby v. Mississippi State Board of Bar Admissions, 185 So. 2d 684, 1966 Miss. LEXIS 1533 (Miss. 1966).

The prohibition against others than members of the bar of the State of Mississippi from engaging in the practice of law is not for the protection of the lawyer against lay competition, but is for the protection of the public. Darby v. Mississippi State Board of Bar Admissions, 185 So. 2d 684, 1966 Miss. LEXIS 1533 (Miss. 1966).

A chiropractor, who, for compensation injected into the body of patients by the use of hypodermic needles vitamins or penicillin for the cure, relief or palliations of the ailments of which the patients were complaining, came within the statutory definition of practicing medicine. Harris v. State, 229 Miss. 755, 92 So. 2d 217, 1957 Miss. LEXIS 323 (Miss. 1957).

Sustaining a conviction of a chiropractor, who, for compensation, injected into the body of patients by the use of hypodermic needles vitamins or penicillin for the cure, relief, or palliation of the patient's ailments, of practicing medicine without a license, would not so construe this section [Code 1942, § 2332] and Code 1942, § 8888, as to render them in violation of the constitutional right of a citizen to liberty and pursuit of happiness, or to constitute a restriction upon the right of private contract. Harris v. State, 229 Miss. 755, 92 So. 2d 217, 1957 Miss. LEXIS 323 (Miss. 1957).

Under statute defining practice of medicine, "medicine" need not be drug used in pharmacopoeia or by druggist and physicians, so long as it is a healing agency, sold for profit. Joyner v. State, 181 Miss. 245, 179 So. 573, 1938 Miss. LEXIS 66 (Miss. 1938).

Whether liquid used by chiropractor on patient's throat preparatory to inserting needle for application of electricity to diseased tonsils, was medicine or anaesthetic instead of mineral water, held for jury. Joyner v. State, 181 Miss. 245, 179 So. 573, 1938 Miss. LEXIS 66 (Miss. 1938).

Offense of practicing medicine without license is not committed by failure to file license in time to prevent it becoming void under a statute [Code 1942, § 8884] avoiding it unless recorded in 60 days from the date of issuance. Grady v. State, 144 Miss. 100, 109 So. 728, 1926 Miss. LEXIS 355 (Miss. 1926).

An osteopath is not within this section [Code 1942, § 2332] nor the Act 1896 (Laws 1896, p. 79; Code 1906, § 3691). Hayden v. State, 81 Miss. 291, 33 So. 653, 1902 Miss. LEXIS 205 (Miss. 1902).

Professional services by a physician who has no license come under this section [Code 1942, § 2332]. Bohn v. Lowry, 77 Miss. 424, 27 So. 604, 1899 Miss. LEXIS 82 (Miss. 1899).

3. Indictment.

Indictment charging defendant "did unlawfully practice as a physician. . . and did not then and there have a license to do so," is sufficient. State v. Tucker, 102 Miss. 517, 59 So. 826, 1912 Miss. LEXIS 82 (Miss. 1912).

RESEARCH REFERENCES

ALR.

Constitutionality and construction of statutes or regulations prohibiting one who has no license to practice dentistry or medicine from owning, maintaining, or operating an office therefor. 20 A.L.R.2d 808.

Trust company's acts as fiduciary as practice of law. 69 A.L.R.2d 404.

Title examination activities by lending institution, insurance company, or title and abstract company, as illegal practice of law. 85 A.L.R.2d 184.

Practicing medicine, surgery, dentistry, optometry, podiatry, or other healing arts without license as a separate or continuing offense. 99 A.L.R.2d 654.

Sale of books or forms designed to enable layman to achieve legal results without assistance of attorney as unauthorized practice of law. 71 A.L.R.3d 1000.

Recovery back of money paid to unlicensed person required by law to have occupation or business license or permit to make contract. 74 A.L.R.3d 637.

Layman's assistance to party in divorce proceeding as unauthorized practice of law. 12 A.L.R.4th 656.

Contracts by organizations in business of providing evidence, witness, or research assistance to legal counsel in specific litigation. 15 A.L.R.4th 1255.

Validity and construction of contracts by organizations in business of providing expert witnesses, research assistance, and consultation services to attorneys in specific litigation. 70 A.L.R.5th 513.

What constitutes "unauthorized practice of law" by out-of-state counsel? 83 A.L.R.5th 497.

Am. Jur.

51 Am. Jur. 2d, Licenses and Permits § 43.

CJS.

53 C.J.S., Licenses §§ 125 et seq.

§§ 97-23-45 through 97-23-53. Repealed.

Repealed by Laws, 1988, ch. 556, § 3, eff from and after July 1, 1988.

§ 97-23-45. [Codes, 1942, § 2374-01; Laws, 1958, ch. 268, § 1]

§ 97-23-47. [Codes, 1942, § 2374-02; Laws, 1958, ch. 268, § 2; Laws, 1975, ch. 460]
§ 97-23-49. [Codes, 1942, § 2374-03; Laws, 1958, ch. 268, § 3]
§ 97-23-51. [Codes, 1942, § 2374-04; Laws, 1958, ch. 268, § 4]
§ 97-23-53. [Codes, 1942, § 2374-05; Laws, 1958, ch. 268, § 5]

Editor's Notes — Former § 97-23-45 was entitled: Shoplifting; elements of the offense. For similar provisions, see § 97-23-93.

Former § 97-23-47 was entitled: Shoplifting; penalties; subsequent offenses. For similar provisions, see § 97-23-93.

Former § 97-23-49 was entitled: Shoplifting; concealment of goods as prima facie evidence of crime. For similar provisions, see § 97-23-93.

Former § 97-23-51 was entitled: Shoplifting; detention of suspect for questioning without incurring civil liability. For similar provisions, see § 97-23-95.

Former § 97-23-53 was entitled: Shoplifting; construction.

§ 97-23-55. Storage battery; unlawful to deface rental battery.

It shall be unlawful for any person to remove or deface or alter or destroy, or cause to be removed or defaced or altered or destroyed the word "rental" or any letter, word, mark or character, printed or painted or stamped or branded upon or attached to, any electric storage battery which has been so placed upon or attached to such electric storage battery to identify the same as belonging to or being the property of another.

HISTORY: Codes, 1930, § 1140; 1942, § 2377; Laws, 1926, ch. 166.

Cross References — Penalty for violation of this section, see § 97-23-61.

§ 97-23-57. Storage battery; unlawful to sell or give away rental battery.

It shall be unlawful for any person to sell, dispose of, deliver or give, or to attempt to sell, dispose of, deliver or give, to any person other than the owner thereof or his agent any electric storage battery upon which the word "rental" or letter, word, mark or character is printed, painted, stamped or branded, for the purpose of identifying said electric storage battery as being a rental battery belonging to or being the property of another.

HISTORY: Codes, 1930, § 1141; 1942, § 2378; Laws, 1926, ch. 166.

Cross References — Penalty for violation of this section, see § 97-23-61.

§ 97-23-59. Storage battery; unlawful to retain or recharge rental battery.

It shall be unlawful for any person to retain in his possession for a longer period than fourteen days, or to recharge, except in cases of emergency, without the consent of the owner thereof, any electric storage battery upon which the word "rental" or any letter, word, mark or character is printed, painted, stamped or branded for the purpose of identifying the said electric storage battery as belonging to or being the property of another.

HISTORY: Codes, 1930, § 1142; 1942, § 2379; Laws, 1926, ch. 166.

Cross References — Penalty for violation of this section, see § 97-23-61.

JUDICIAL DECISIONS

1. In general.

Prosecution for failure to return storage battery eleven days after expiration of rental agreement held prematurely instituted. Ball v. State, 150 Miss. 780, 116 So. 878, 1928 Miss. LEXIS 151 (Miss. 1928).

Affidavit alleging failure to return storage batteries, filed eleven days after expiration of rental agreement, held insufficient under law requiring return within fourteen days. Ball v. State, 150 Miss. 780, 116 So. 878, 1928 Miss. LEXIS 151 (Miss. 1928).

§ 97-23-61. Storage battery; penalty.

Any person violating any of the provisions of any one of Sections 97-23-55 through 97-23-59 shall be guilty of a misdemeanor, and upon conviction thereof, shall be sentenced to pay a fine not exceeding twenty-five dollars or be imprisoned for a term not exceeding thirty days, or both such fine and imprisonment.

HISTORY: Codes, 1930, § 1143; 1942, § 2380; Laws, 1926, ch. 166.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§§ 97-23-63 through 97-23-82. Repealed.

Repealed by Laws, 1986, ch. 302, § 4, eff from and after July 1, 1986 (became law on February 4, 1986, without the Governor's signature).

§ 97-23-63. [Codes, Hutchinson's 1848, ch. 64, art. 4(4); 1857, ch. 64, art. 225; 1871, § 2679; 1880, § 2949; 1892, § 1291; 1906, § 1366; Hemingway's 1917, § 1102; 1930, § 1131; 1942, § 2368; Laws, 1926, ch. 277; Laws, 1932, ch. 248; Laws, 1954, ch. 252; Laws, 1956, ch. 247; Laws, 1982, ch. 401, § 1]

§ 97-23-65. [Codes, 1942, § 2369-02; Laws, 1964, ch. 353, § 2]

§ 97-23-67. [Codes, 1942, § 2369-03; Laws, 1964, ch. 353, § 3]

§ 97-23-69. [Codes, 1942, § 2369-04; Laws, 1964, ch. 353, § 4]

§ 97-23-71. [Codes, 1942, § 2369-05; Laws, 1964, ch. 353, § 5]

§ 97-23-73. [Codes, 1942, § 2369-06; Laws, 1964, ch. 353, § 6]

§ 97-23-75. [Codes, 1942, § 2369-07; Laws, 1964, ch. 353, § 7]

§ 97-23-77. [Codes, 1942, § 2369-01; Laws, 1964, ch. 353, § 1]

§ 97-23-79. [Codes, Hutchinson's 1848, ch. 64, art. 4(7); 1857, ch. 64, art. 227; 1871, § 2681; 1880, § 2951; 1892, § 1293; 1906, § 1368; Hemingway's 1917, § 1104; 1930, § 1133; 1942, § 2370; Laws, 1948, ch. 401, § 1; Laws, 1954, ch. 239; Laws, 1966, ch. 361, § 1]

§ 97-23-81. [Codes, 1942, § 2370.5; Laws, 1948, ch. 401, § 2; Laws, 1966, ch. 361, § 2]

§ 97-23-82. [En Laws, 1973, ch. 393, § 1]

Editor's Notes — Former § 97-23-63 was entitled: Sunday; violations of Sabbath generally.

Former § 97-23-65 was entitled: Sunday sales; definition of "person."

Former § 97-23-67 was entitled: Sunday sales; prohibition of sales; exceptions.

Former § 97-23-69 was entitled: Sunday sales; certain sales and carrying of advertisement by communications media not prohibited.

Former § 97-23-71 was entitled: Sunday sales; penalties for violations.

Former § 97-23-73 was entitled: Sunday sales; injunction to restrain violations; costs.

Former § 97-23-75 was entitled: Sunday sales; powers of municipal governing authorities or boards of supervisors.

Former § 97-23-77 was entitled: Sunday sales; construction of law.

Former § 97-23-79 was entitled: Sunday shows or exhibits; certain shows, games, etc., prohibited; exceptions.

Former § 97-23-81 was entitled: Sunday shows or exhibits; local option election.

Former § 97-23-82 made playing of baseball, football, basketball, tennis and golf games on Sunday legal.

§ 97-23-83. Threats or coercion to prevent lawful conduct of business.

If any person shall in any manner threaten with bodily harm, intimidate or coerce another person to prevent said person from lawfully trading or carrying on business, including buying or selling, he shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment for not more than one (1) year in the county jail or be fined not more than one thousand dollars ($1,000.00) or both.

HISTORY: Codes, 1942, § 2384.5; Laws, 1966, ch. 384, § 1, eff from and after passage (approved February 9, 1966).

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

No precise words are needed to convey a threat directed against customers of a store and intended to induce them to leave the store's premises, and it was a question for the jury whether the language directed to the customers constituted threats or coercion under the provisions of this section [Code 1942, § 2384.5]. Shields v. State, 203 So. 2d 78, 1967 Miss. LEXIS 1354 (Miss. 1967).

RESEARCH REFERENCES

CJS.

86 C.J.S., Threats and Unlawful Communications §§ 1 et seq.

§ 97-23-85. Unlawful restraint of trade; boycott; civil liability.

If two (2) or more persons conspire to prevent another person or other persons from trading or doing business with any merchant or other business and as a result of said conspiracy said persons induce or encourage any individual or individuals to cease doing business with any merchant or other person, and when such conspiracy is formed and effectuated because of a reasonable grievance of the conspirators over which the said merchant or place of business boycotted or against which a boycott is attempted has no direct control or no legal authority to correct, or when the conspiracy results from such alleged grievance against the merchant or other person boycotted when no notice of such grievance has been given the merchant or party boycotted and no reasonable opportunity to correct such alleged grievance has been given such merchant or other person against whom the conspiracy was formed, then each of such persons shall be guilty of the crime of unlawful restraint of trade and shall be fined not more than one thousand dollars ($1,000.00) or imprisoned for not more than two (2) years and in addition each such person shall be liable in civil action for any damages suffered by said merchant or place of business so wrongfully boycotted and also for attorney fees incurred by said merchant or person boycotted in a civil action to recover damages.

HISTORY: Codes, 1942, § 2059.3; Laws, 1968, ch. 344, § 3, eff from and after passage (approved July 30, 1968).

Cross References — Trusts and combines in restraint or hindrance of trade, see §§ 75-21-1 et seq.

Conspiracy, generally, see § 97-1-1.

Conspiracy to prevent persons from engaging in lawful work, see § 97-23-41.

JUDICIAL DECISIONS

1. In general.

The statute is prospective in nature and does not reflect any retrospective force; therefore, it did not apply to an economic boycott instituted on April 1, 1966. NAACP v. Claiborne Hardware Co., 393 So. 2d 1290, 1980 Miss. LEXIS 2174 (Miss. 1980), amended, 405 So. 2d 115, 1981 Miss. LEXIS 2244 (Miss. 1981), rev'd, 458 U.S. 886, 102 S. Ct. 3409, 73 L. Ed. 2d 1215, 1982 U.S. LEXIS 49 (U.S. 1982).

RESEARCH REFERENCES

ALR.

Attorneys' fees: cost of services provided by paralegals or the like as compensable element of award in state court. 73 A.L.R.4th 938.

Liability, under statute, of labor union or its membership for torts committed in connection with primary labor activities-state cases. 85 A.L.R.4th 979.

Am. Jur.

16 Am. Jur. 2d, Conspiracy §§ 1 et seq.

CJS.

15A C.J.S., Conspiracy § 290.

§ 97-23-87. Unauthorized copying or sale of recordings.

(1) For purposes of this section, the following words shall have the meaning ascribed herein, unless the context requires otherwise:

(a) "Person" means any individual, partnership, corporation, association or any communications media, including radio or television, broadcasters or licensees, newspapers, magazines, or other publications or media which offer facilities for the purposes stated herein.

(b) "Owner" means the person who owns, or who has the license in the United States to produce or to distribute to the public copies of the original fixation of sounds or pictures embodied in, the master phonograph record, master disc, master tape, master videocassette, master film or other device used for reproducing recorded sounds or images on phonograph records, discs, tapes, films or other articles on which sound or images are recorded, and from which the transferred recorded sounds or images are directly or indirectly derived.

(2)(a) Any person who shall knowingly and willfully transfer or cause to be transferred, without the consent of the owner, any sounds or images recorded on phonograph record, disc, wire, tape, videocassette, film, or other article or device on which sounds or images are recorded with intent to sell, rent for a fee, or cause to be sold, or rented for a fee or for any financial gain the article on which such sounds or images are transferred, shall be guilty of a felony and, upon conviction of a first violation of this subsection, shall be fined not more than Twenty-five Thousand Dollars ($25,000.00) or be imprisoned in the State Penitentiary for not more than five (5) years, or both. Any person who shall be convicted of a second or subsequent violation of this subsection shall be fined not more than One Hundred Thousand Dollars ($100,000.00) or be imprisoned not more than ten (10) years, or both.

(b) Any person who records, masters or causes to be recorded or mastered on any recorded article or device with the intent to sell, market or lease for commercial advantage or private financial gain, the sounds or images of a live performance, with the knowledge that the sounds or images so recorded have been recorded or mastered without the consent of the owner of the sounds of the live performance, is guilty of a felony, and upon conviction thereof, shall be subject to fine and imprisonment as provided for the first and subsequent convictions of violations of subsection (2)(a). In the absence of a written agreement or operation of law to the contrary, the performer or performers of the sounds of a live performance shall be presumed to own the right to record or master those sounds. Such performers shall also be deemed, in absence of such agreement or operation of law, to own the right to display and distribute their own personal images.

(c) Each and every individual and separate manufacture of a recorded device as described in this subsection shall constitute a separate offense of this subsection.

(3)(a) It is unlawful for any person to:

(i) Advertise, offer for sale or sell any such article or device described in subsection (2)(a) of this section with the knowledge that the sounds or images thereon have been transferred without the consent of the owner;

(ii) Offer or make available for a fee, rental or any other form of compensation, directly or indirectly, any equipment or machinery with the knowledge that it will be used by another to reproduce, without the consent of the owner, any phonograph record, disc, wire, tape, videocassette, film or other article on which sounds or images have been transferred; or

(iii) Possess with intent to sell, to make available for a fee, rental or other form of compensation, or for the purpose of obtaining any form of compensation through the use of any article or device described in subsection (2) (a), with the knowledge that the sounds or images thereon have been transferred without the consent of the owner.

Any person convicted of a first violation of this subsection shall be guilty of a felony and fined not more than Five Thousand Dollars ($5,000.00) or imprisoned in the State Penitentiary for not more than three (3) years, or both. Any person convicted of a second or subsequent violation of this subsection shall be guilty of a felony and fined not more than Fifty Thousand Dollars ($50,000.00) or imprisoned in the State Penitentiary for not more than seven (7) years, or both.

(b) Each and every individual advertisement, offer for sale, sale, rental or possession of such recorded devices or offer or making available of equipment or machinery in violation of the provisions of this subsection shall constitute a separate offense.

(4) The provisions of this subsection shall not apply to reproduction of sounds or images made in the home for private use with no purpose of otherwise capitalizing commercially on such reproduction.

HISTORY: Laws, 1974, ch. 527, § 1; Laws, 1992, ch. 556, § 1; Laws, 2009, ch. 378, § 4, eff from and after July 1, 2009.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. Illegal conduct.

Trial court erred in overturning the denial of unemployment benefits to a corrections employee who was terminated where the employee admitted to distributing bootleg copies of DVDs to coworkers while at work, in violation of Miss. Code Ann. § 47-5-49; employee also admitted knowing that distributing bootleg copies of DVDs was illegal under Miss. Code Ann. § 97-23-87(3)(a)(I) and Miss. Code Ann. § 97-23-89(2). Miss. Dep't of Corr. v. Scott, 929 So. 2d 975, 2006 Miss. App. LEXIS 376 (Miss. Ct. App. 2006).

RESEARCH REFERENCES

ALR.

Unfair competition by direct reproduction of literary, artistic, or musical property. 40 A.L.R.3d 566.

State civil actions by subscription television business for use, or providing technical means of use, of transmissions by nonsubscribers. 46 A.L.R.4th 811.

§ 97-23-89. Sale, distribution of recordings without display of required information.

(1) For purposes of this section, the following words shall have the meaning ascribed herein, unless the context requires otherwise:

(a) "Person" means any individual, partnership, corporation or association.

(b) "Manufacturer" means any individual, partnership, corporation or association which, after first having acquired the right to transfer sounds or images from the lawful owner thereof, actually transfers or causes the transfer thereon of such sounds or images recorded on a phonograph record, disc, wire, tape, videocassette, film or other article on which sounds or images are recorded, or assembles and transfers any product containing such transferred sounds or images as a component thereof.

(2) It shall be unlawful for any person to manufacture or knowingly (a) sell, rent, distribute or circulate, (b) cause to be sold, distributed or circulated, or (c) possess with intent to sell, rent, distribute or circulate, for any compensation, a recorded article or device containing sounds or images, including any phonograph record, tape, disc, videocassette, film or other article or device upon which sounds or images may be fixed or reproduced, without the actual name and street address of the manufacturer thereof and, when the recorded article or device contains sounds only, without the name of the actual performer or group of performers prominently disclosed on the cover, jacket, box or label containing such recorded article or device. Any person who is convicted of a first violation of this subsection shall be guilty of a felony and fined not more than Ten Thousand Dollars ($10,000.00) or be imprisoned in the State Penitentiary for not more than three (3) years, or both. Any person who is convicted of a second or subsequent violation of this subsection shall be guilty of a felony and fined not more than Fifty Thousand Dollars ($50,000.00) or be imprisoned in the State Penitentiary for not more than seven (7) years, or both.

(3) Each and every individual manufacture, distribution or sale or transfer for a consideration of such recorded article or device in violation of the provisions of this section shall constitute a separate offense.

(4) Property used in any way to violate the provisions of this section shall be subject to forfeiture under Sections 97-21-101 and 97-21-103.

HISTORY: Laws, 1974, ch. 527, § 2; Laws, 1992, ch. 556, § 2; Laws, 2011, ch. 346, § 6, eff from and after July 1, 2011.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. Illegal conduct.

Trial court erred in overturning the denial of unemployment benefits to a corrections employee who was terminated where the employee admitted to distributing bootleg copies of DVDs to coworkers while at work, in violation of Miss. Code Ann. § 47-5-49; employee also admitted knowing that distributing bootleg copies of DVDs was illegal under Miss. Code Ann. § 97-23-87(3)(a)(I) and Miss. Code Ann. § 97-23-89(2). Miss. Dep't of Corr. v. Scott, 929 So. 2d 975, 2006 Miss. App. LEXIS 376 (Miss. Ct. App. 2006).

§ 97-23-91. Construction of Sections 97-23-87 through 97-23-91; private causes of action; confiscation of illegal recordings.

(1) Except as otherwise provided in this section, the provisions of Sections 97-23-87 through 97-23-91 shall not be construed or interpreted to enlarge or diminish the rights of parties in civil litigation. Such sections shall not be construed or interpreted to apply to the transfer by a television operator, radio or television broadcaster, librarian or archivist of any such sounds (other than from the sound track of a motion picture) intended for, or in connection with, broadcast transmission, retransmission or related uses, or for archival purposes only.

(2) Any owner of a recorded article or device whose work is allegedly the subject of a violation of the provisions of Section 97-23-87 or 97-23-89 shall have a cause of action in the circuit courts of this state for all damages resulting therefrom, including actual, compensatory, incidental and punitive damages.

(3) Any lawful producer of a recorded article or device whose product is allegedly the subject of a violation of the provisions of Section 97-23-87 or 97-23-89 shall have a cause of action in the circuit courts of this state for all damages resulting therefrom, including actual, compensatory, incidental and punitive damages.

(4) It shall be the duty of any state, county or local law enforcement officer to confiscate all recorded articles and devices prohibited by the provisions of Sections 97-23-87 and 97-23-89 and all equipment and components used or intended to be used in the manufacture of the recordings prohibited by said sections. The law enforcement officer confiscating such materials and equipment shall deliver the prohibited recorded material, equipment and components to the State Attorney General or the appropriate local district attorney of the judicial district in which the confiscation was made, or cause the same to be stored in a safe place until such time as the court having jurisdiction over the confiscated recorded material and equipment shall determine the rights, if any, of any person in and to said confiscated materials and the appropriate disposition of such material and equipment. The provisions of this section shall apply to any prohibited recording, regardless of lack of knowledge or intent on the part of the person in possession of same to violate Section 97-23-87 or 97-23-89.

HISTORY: Laws, 1974, ch. 527, § 3; Laws, 1992, ch. 556, § 3, eff from and after July 1, 1992.

Cross References — Punitive damages, generally, see § 11-1-65.

§ 97-23-92. Unauthorized use of audiovisual recording device in motion picture theater.

(1) Any person who knowingly operates the audiovisual recording function of any device in a motion picture theater while a motion picture is being exhibited without the consent of the motion picture theater owner commits a crime punishable as provided in subsection (7) of this section.

(2) The term "audiovisual recording function" means the capability of a device to record or transmit a motion picture or any part thereof by means of any technology whether developed before or after July 1, 2005.

(3) The term "motion picture theater" means a movie theater, screening room or other venue that is being utilized primarily for the exhibition of a motion picture at the time of the alleged offense.

(4) The owner or lessee of a motion picture theater, or the authorized agent or employee of the owner or lessee, who alerts law enforcement authorities of an alleged violation of this section shall not be liable in any civil action arising out of measures taken while awaiting the arrival of law enforcement authorities by the owner, lessee, agent or employee in the course of subsequently detaining a person whom the owner, lessee, agent or employee in good faith believed to have violated this section unless the plaintiff can show by clear and convincing evidence that the measures were manifestly unreasonable or the period of detention was unreasonably long.

(5) This section does not prevent any lawfully authorized investigative, law enforcement, protective, or intelligence gathering employee or agent of the local, state or federal government from operating any audiovisual recording device in a motion picture theater as part of lawfully authorized investigative, protective, law enforcement, or intelligence gathering activities.

(6) Nothing in this section shall prevent prosecution under any provision of law providing for greater penalty.

(7) A person convicted of violating this section shall be punished by a fine not to exceed One Thousand Dollars ($1,000.00) or imprisonment in the county jail not to exceed six (6) months, or either.

HISTORY: Laws, 2005, ch. 336, § 1, eff from and after July 1, 2005.

§ 97-23-93. Shoplifting; elements of offense; presumptions; evidence; penalties; aggregation of multiple offenses occurring within same jurisdiction over 30-day period in determining gravity of offense.

(1) Any person who shall willfully and unlawfully take possession of any merchandise owned or held by and offered or displayed for sale by any

merchant, store or other mercantile establishment with the intention and purpose of converting such merchandise to his own use without paying the merchant's stated price therefor shall be guilty of the crime of shoplifting and, upon conviction, shall be punished as is provided in this section.

(2) The requisite intention to convert merchandise without paying the merchant's stated price for the merchandise is presumed, and shall be prima facie evidence thereof, when such person, alone or in concert with another person, willfully:

(a) Conceals the unpurchased merchandise;

(b) Removes or causes the removal of unpurchased merchandise from a store or other mercantile establishment;

(c) Alters, transfers or removes any price-marking, any other marking which aids in determining value affixed to the unpurchased merchandise, or any tag or device used in electronic surveillance of unpurchased merchandise;

(d) Transfers the unpurchased merchandise from one container to another; or

(e) Causes the cash register or other sales recording device to reflect less than the merchant's stated price for the unpurchased merchandise.

(3) Evidence of stated price or ownership of merchandise may include, but is not limited to:

(a) The actual merchandise or the container which held the merchandise alleged to have been shoplifted; or

(b) The content of the price tag or marking from such merchandise; or

(c) Properly identified photographs of such merchandise.

(4) Any merchant or his agent or employee may testify at a trial as to the stated price or ownership of merchandise.

(5) A person convicted of shoplifting merchandise for which the merchant's stated price is less than or equal to One Thousand Dollars ($1,000.00) shall be punished as follows:

(a) Upon a first shoplifting conviction the defendant shall be guilty of a misdemeanor and fined not more than One Thousand Dollars ($1,000.00), or punished by imprisonment in the county jail not to exceed six (6) months, or by both if the court finds substantial and compelling reasons why the offender cannot be safely and effectively supervised in the community, is not amenable to community-based treatment, or poses a significant risk to public safety. If such a finding is not made, the court shall suspend the sentence of imprisonment and impose a period of probation not exceeding one (1) year or a fine of not more than One Thousand Dollars ($1,000.00).

(b) Upon a second shoplifting conviction the defendant shall be guilty of a misdemeanor and fined not more than One Thousand Dollars ($1,000.00) or punished by imprisonment in the county jail for a term not to exceed six (6) months, or by both if the court finds substantial and compelling reasons why the offender cannot be safely and effectively supervised in the community, is not amenable to community-based treatment, or poses a significant risk to public safety. If such a finding is not made, the court shall suspend the sentence of imprisonment and impose a period of probation not exceeding one (1) year or a fine of not more than One Thousand Dollars ($1,000.00), or both.

(6) Upon a third or subsequent shoplifting conviction where the value of the shoplifted merchandise is not less than Five Hundred Dollars ($500.00) or greater than One Thousand Dollars ($1,000.00), the defendant shall be guilty of a felony and fined not more than One Thousand Dollars ($1,000.00), or imprisoned for a term not exceeding three (3) years, or by both such fine and imprisonment.

(7) A person convicted of shoplifting merchandise for which the merchant's stated price exceeds One Thousand Dollars ($1,000.00) shall be guilty of a felony and, upon conviction, punished as provided in Section 97-17-41 for the offense of grand larceny.

(8) In determining the number of prior shoplifting convictions for purposes of imposing punishment under this section, the court shall disregard all such convictions occurring more than seven (7) years prior to the shoplifting offense in question.

(9) For the purpose of determining the gravity of the offense under subsection (7) of this section, the prosecutor may aggregate the value of merchandise shoplifted from three (3) or more separate mercantile establishments within the same legal jurisdiction over a period of thirty (30) or fewer days.

HISTORY: Laws, 1988, ch. 556, § 1; Laws, 2003, ch. 499, § 8; Laws, 2005, ch. 511, § 2; Laws, 2014, ch. 457, § 29, eff from and after July 1, 2014.

Cross References — Civil remedy for shoplifting violations, see § 97-23-96.

Organized theft or fraud enterprise applicable to conduct proscribed in this section, see § 97-43-3.1.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

JUDICIAL DECISIONS

ANALYSIS

I. UNDER CURRENT LAW.

1. In general.
2. Subsequent offenses.
3. Computations.
4. Evidence.
5. Indictments.
6. Sentence.

7.-10. [Reserved for future use.]

II. UNDER FORMER § 97-23-45.

11. In general.

I. UNDER CURRENT LAW.

1. In general.

Trial court did not err by not giving the jury a lesser-included-offense jury instruction of misdemeanor shoplifting because the store employee testified, and the inventory list of the stolen items and their values showed, that the total value of lost merchandise was $3,315. Stevens v. State, 294 So. 3d 699, 2020 Miss. App. LEXIS 128 (Miss. Ct. App. 2020).

After a jury convicted appellant of felony shoplifting, Miss. Code Ann. § 97-

23-93(1), a trial court did not err in denying appellant's post-trial motions for a new trial, or in the alternative, a judgment notwithstanding the verdict because appellant admitted to taking cigars from behind a store counter with the intent to steal the cigars and resell them later, and as such, appellant completed the crime of shoplifting at the moment he took possession of the cigars with the intent to take the cigars without paying for them, and whether he left the premises with the cigars was irrelevant. Newson v. State, 107 So. 3d 1079, 2013 Miss. App. LEXIS 70 (Miss. Ct. App. 2013).

Defendant was properly convicted as a felony shoplifter based upon Miss. Code Ann. § 97-23-93 as it existed on November 4, 2002. Wilson v. State, 967 So. 2d 32, 2007 Miss. LEXIS 593 (Miss. 2007).

As defendant was properly convicted of felony shoplifting in violation of Miss. Code Ann. § 97-23-93, defendant's five year sentence pursuant to Miss. Code Ann. § 97-17-41 was proper as it did not exceed the statutory maximum. Watson v. State, 939 So. 2d 806, 2006 Miss. App. LEXIS 121 (Miss. Ct. App.), cert. denied, 939 So. 2d 805, 2006 Miss. LEXIS 592 (Miss. 2006).

Sufficient evidence supported defendant's conviction for felony shoplifting under Miss. Code Ann. § 97-23-93 based on two prior misdemeanor shoplifting offenses because the prior misdemeanors were elements of felony charge and had to be proven beyond a reasonable doubt, and defendant failed to rebut the presumption of validity that attached to abstracts of convictions by presenting evidence to show there was an irregularity in the abstracts. Biggs v. State, 942 So. 2d 185, 2006 Miss. App. LEXIS 1 (Miss. Ct. App.), cert. denied, 942 So. 2d 164, 2006 Miss. LEXIS 715 (Miss. 2006).

To convict for felony shoplifting under Miss. Code Ann. § 97-23-93 (6), (8), the State was required to prove as part of its case-in-chief and as an element of the charge, that defendant had twice previously been convicted of shoplifting within seven years. No such proof was offered, and while defendant testified on cross-examination that she had been convicted of shoplifting in 1999, there was no testimony or evidence that she had been convicted twice of shoplifting within seven years prior to the offense charged, nor was the jury instructed as to this; although defendant never moved for a directed verdict on the latter ground, nor did she raise it on appeal; reviewing the matter as plain error, the appellate court held that reversal on the felony shoplifting charge was warranted, but that entry of conviction for the second shoplifting offense was in order. Evans v. State, 919 So. 2d 231, 2005 Miss. App. LEXIS 424 (Miss. Ct. App. 2005).

Sufficient evidence existed to convict defendant of felony shoplifting as a store employee gave the opinion that defendant was the individual depicted in a videotape seen stealing cartons of cigarettes, the jury was also able to watch the videotape, and defendant had previously twice been convicted of shoplifting. Ratliff v. State, 879 So. 2d 1062, 2004 Miss. App. LEXIS 749 (Miss. Ct. App. 2004).

Evidence was sufficient to find defendant guilty of conspiracy to commit and committing felony shoplifting; the evidence presented by the State included testimony from several officers regarding the events after the shoplifting at one of the stores, including an in-court identification of defendant as the driver of the maroon car used, and any conflicts in the testimony of witness was resolved by the jury. Richardson v. State, 868 So. 2d 389, 2004 Miss. App. LEXIS 209 (Miss. Ct. App. 2004).

Defendant's conviction for felony shoplifting was proper where credible evidence was presented supporting an inference that defendant did take possession of the merchandise in question, steaks, with the intention of converting them to his own use without paying for them. Sykes v. State, 846 So. 2d 307, 2003 Miss. App. LEXIS 458 (Miss. Ct. App. 2003).

The evidence was insufficient to support a shoplifting conviction where the defendant was in the same store with the co-defendant during the shoplifting episode involving the co-defendant and the defendant rode away from the store in a car driven by the co-defendant at a high rate of speed, but there was no evidence that the defendant knew that the shoplifting episode was taking place or that it was planned. Lewis v. State, 573 So. 2d 719, 1990 Miss. LEXIS 806 (Miss. 1990).

2. Subsequent offenses.

State inmate convicted of third-offense felony shoplifting under Miss. Code Ann. § 97-23-93(6) and sentenced to life in prison without the possibility of parole was granted habeas corpus under 28 U.S.C.S. § 2254 based on a fundamental miscarriage of justice because the facts presented at sentencing did not establish that the inmate had actually served one year in prison for a prior felony conviction, an essential element to prove habitual offender status under Miss. Code Ann. § 99-19-83. Sumrell v. Mississippi, 607 F. Supp. 2d 748, 2009 U.S. Dist. LEXIS 30798 (N.D. Miss. 2009), op. withdrawn, 2009 U.S. Dist. LEXIS 39162 (N.D. Miss. May 8, 2009).

Defendant's conviction of felony shoplifting and five-year sentence without parole as a habitual offender was affirmed where the appellate court found no merit in his arguments that the indictment was defective and that the jurors' handwritten verdict was ambiguous; nothing in the language of the shoplifting statute, Miss. Code Ann. § 97-23-93, nor in this habitual offender statute, Miss. Code Ann. § 99-19-81, prevented conviction of a third felony shoplifting from having the normal maximum sentencing rules apply. Taylor v. State, 838 So. 2d 339, 2002 Miss. App. LEXIS 512 (Miss. Ct. App. 2002), cert. denied, 837 So. 2d 771, 2003 Miss. App. LEXIS 175 (Miss. Ct. App. 2003).

Where a defendant was found to have violated the terms and conditions of his probation, the court had the power to impose any sentence that would have been originally imposed. Brunson v. State, 796 So. 2d 284, 2001 Miss. App. LEXIS 387 (Miss. Ct. App. 2001).

An indictment for felony shoplifting was not fatally flawed for failing to enumerate the defendant's prior shoplifting convictions; the clear language of the statute designates a third or subsequent shoplifting conviction as a felony, and the statute does not require successive convictions to receive a numerical designation before a felony may be charged. Moore v. State, 781 So. 2d 159, 2000 Miss. App. LEXIS 480 (Miss. Ct. App. 2000).

Trial court did not err in sentencing the defendant under the more severe penalties for shoplifting, third offense, despite the fact that the jury was not permitted to pass on the question of fact as to whether defendant actually had two prior shoplifting convictions; prior to commencement of his trial, the defendant successfully moved to prohibit the state from making any reference to his prior convictions because of the harmful prejudicial nature of such information and had successfully moved for the determination of this aspect of the case by a post-verdict inquiry. Sellers v. State, 773 So. 2d 350, 2000 Miss. App. LEXIS 156 (Miss. Ct. App. 2000).

3. Computations.

Appellate court holds that for purposes of the computations required under Miss. Code Ann. § 97-23-93(8), relating to prior shoplifting convictions, the date of the "offense" is the date of the occurrence giving rise to the current charge rather than the date that it is finally adjudicated that the criminal activity actually occurred. Bufkin v. State, 867 So. 2d 285, 2004 Miss. App. LEXIS 191 (Miss. Ct. App. 2004).

4. Evidence.

Inmate waived any argument as to any possible evidentiary defects in his indictment charging him as a habitual offender for felony shoplifting pursuant to Miss. Code Ann. § 97-23-93(7) because by entering his guilty plea, the inmate fully admitted to the circuit court that he was guilty of shoplifting merchandise with a value greater than $ 500, and that testimony was sufficient to constitute felony shoplifting under § 97-23-93(7), Phillips v. State, 25 So. 3d 404, 2010 Miss. App. LEXIS 23 (Miss. Ct. App. 2010).

Felony shoplifting is somewhat akin to felony driving under the influence (DUI) in that both rely on multiple prior convictions for the same offending conduct to raise the level of offense from a misdemeanor to a felony, and the Mississippi Supreme Court plainly states that, in the matter of DUI offenses, the prior convictions are elements of the crime that must be determined by the finder of fact beyond reasonable doubt as a part of the prosecution's case in chief. Thus, the trial court properly dealt with the problems arising under Miss. R. Evid. 404(b) by instructing the jury that it could not consider evidence of defendant's prior shoplifting convictions as evidence of defendant's guilt in the instant case. Bufkin v. State, 867 So. 2d 285, 2004 Miss. App. LEXIS 191 (Miss. Ct. App. 2004).

5. Indictments.

Inmate waived any argument as to any possible evidentiary defects in his indictment charging him as a habitual offender for felony shoplifting pursuant to Miss. Code Ann. § 97-23-93(7) because by entering his guilty plea, the inmate fully admitted to the circuit court that he was guilty of shoplifting merchandise with a value greater than $ 500, and that testimony was sufficient to constitute felony shoplifting under § 97-23-93(7), Phillips v. State, 25 So. 3d 404, 2010 Miss. App. LEXIS 23 (Miss. Ct. App. 2010).

Defendant maintained that the indictment was insufficient because it omitted the allegation that she had concealed the merchandise and it failed to fully notify her of the nature and the cause of the offense charged. However, the indictment sufficiently informed her that she was charged with taking the steaks with the intent of converting them to her own use without paying for them; moreover, her defense was that she had not concealed the steaks but only had them under her arm and, it was apparently clear to her that the State was relying upon the provisions of Miss. Code Ann. § 97-23-93(2)(a) (presumptive intent). Evans v. State, 919 So. 2d 231, 2005 Miss. App. LEXIS 424 (Miss. Ct. App. 2005).

6. Sentence.

Trial court did not err by failing to apply the ameliorative provisions contained in the amendments to the shoplifting statute because the amendment dealt with the elements of the offense, rather than the penalty. As such, it was proper to deny a requested instruction that reflected the amended statute, which would have found defendant guilty of felony shoplifting only if the price of the goods exceeded $1,000. Moore v. State, 187 So. 3d 109, 2016 Miss. LEXIS 41 (Miss. 2016).

Imposition of a five-year sentence after appellant was convicted of felony shoplifting, Miss. Code Ann. § 97-23-93(1), was not disproportionate because appellant had two prior felony convictions, establishing his status as a habitual offender, Miss. Code Ann. § 99-19-81, and two prior shoplifting convictions, establishing his status as a third shoplifting offender, and the five-year sentence was within the maximum term allowed by § 97-23-93(6). Newson v. State, 107 So. 3d 1079, 2013 Miss. App. LEXIS 70 (Miss. Ct. App. 2013).

In a case in which defendant had been sentenced to 10 years of imprisonment as a habitual offender after violating Miss. Code Ann. § 97-23-93, defendant unsuccessfully argued that she should not have been charged as a habitual offender as the sentences for her two previous convictions were served concurrently. The two prior felonies were separate incidents, which occurred at different times, and each carried a sentence of at least one year; the fact that she was only incarcerated for one year while serving her concurrent sentences did not afford her relief from habitual offender status under Miss. Code Ann. § 99-19-81. Williams v. State, 24 So. 3d 360, 2009 Miss. App. LEXIS 940 (Miss. Ct. App. 2009).

In a case in which defendant had been sentenced to 10 years of imprisonment as a habitual offender after violating Miss. Code Ann. § 97-23-93, defendant unsuccessfully argued that her sentence was unconstitutional as it exceeded the maximum sentence allowed by law. As she was a habitual offender, the circuit court was required under Miss. Code Ann. § 99-19-81 to impose the maximum sentence for grand larceny, which, under Miss. Code Ann. § 97-17-41, was 10 years and a fine of $ 10,000. Williams v. State, 24 So. 3d 360, 2009 Miss. App. LEXIS 940 (Miss. Ct. App. 2009).

7.-10. [Reserved for future use.]

II. UNDER FORMER § 97-23-45.

11. In general.

Manager clearly believed that while the

customer's partner pilfered sausages by placing them in her purse, the customer acted as a decoy to distract watchful employees, and when the manager then requested that the customer and his partner accompany him to resolve the issue, the customer became belligerent, escorted his partner to his car, and drove away. Viewing the evidence in a light most favorable to the customer, it was clear that a fair-minded jury could not have concluded that the grocery store and its manager pursued criminal proceedings without probable cause or that the grocery store and its manager acted with malice; thus, summary judgment for the grocery store and its manager upon the customer's suit for malicious prosecution was proper. Williams v. Jitney Jungle, Inc., 910 So. 2d 39, 2005 Miss. App. LEXIS 53 (Miss. Ct. App. 2005).

State trial court's refusal of defendant's lesser-included-offense instruction did not violate any of his federal constitutional rights where instructions on lesser included offense could properly be denied under standard that satisfies due process. Reddix v. Thigpen, 805 F.2d 506, 1986 U.S. App. LEXIS 34562 (5th Cir. Miss. 1986).

RESEARCH REFERENCES

ALR.

Construction and effect, in false imprisonment action, of statute providing for detention of suspected shoplifters. 47 A.L.R.3d 998.

Changing of price tags by patrons in self-service store as criminal offense. 60 A.L.R.3d 1293.

Use of electronic sensing device to detect shoplifting as unconstitutional search and seizure. 10 A.L.R.4th 376.

Validity, construction, and effect of statutes establishing shoplifting or its equivalent as separate criminal offense. 64 A.L.R.4th 1088.

Am. Jur.

5 Am. Jur. 2d, Arrest § 59.

29 Am. Jur. 2d, Evidence § 421.

50 Am. Jur. 2d, Larceny § 63

13 Am. Jur. Trials, Defending Minor Felony Cases §§ 1 et seq.

§ 97-23-93.1. Shoplifting; use of theft detection device remover prohibited; use of theft detection shielding device prohibited; activation of anti-shoplifting device constitutes probable cause for detention.

(1) As used in this section:

(a) "Theft detection device" means any tag or other device that is used to prevent or detect theft and that is attached to merchandise held for resale by a merchant or to property of a merchant.

(b) "Theft detection device remover" means any tool or device specifically designed or manufactured to be used to remove a theft detection device from merchandise held for resale by a merchant or property of a merchant.

(c) "Theft detection shielding device" means any laminated or coated bag or device designed to shield merchandise held for resale by a merchant or property of a merchant from being detected by an electronic or magnetic theft alarm sensor.

(2)(a) A person commits unlawful distribution of a theft detection shielding device when he or she knowingly manufactures, sells, offers to sell or distributes any theft detection shielding device.

(b) A person commits unlawful possession of a theft detection shielding device when he or she knowingly possesses any theft detection shielding device with the intent to commit larceny or shoplifting.

(c) A person commits unlawful possession of a theft detection device remover when he or she knowingly possesses any theft detection device remover with the intent to use such tool to remove any theft detection device from any merchandise without the permission of the merchant or person owning or holding said merchandise.

(d) A person commits unlawful use of a theft detection shielding device or a theft detection device remover when he or she uses or attempts to use either device while committing a violation of Section 97-23-93, Mississippi Code of 1972.

(e) Any person convicted of violating this subsection (2) is guilty of a misdemeanor, and upon conviction thereof, shall be imprisoned for not less than thirty (30) days nor more than one (1) year, and fined not less than Two Hundred Fifty Dollars ($250.00), nor more than One Thousand Dollars ($1,000.00).

(3)(a) A person commits unlawful removal of a theft detection device when he or she intentionally removes any theft detection device from merchandise prior to purchase without the permission of the merchant or person owning or holding said merchandise.

(b) Any person convicted of violating this subsection (3) is guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00), and such fine shall not be suspended, or the person shall be imprisoned not more than sixty (60) days, or both.

(4)(a) The activation of an anti-shoplifting or inventory control device as a result of a person exiting the establishment or a protected area within the establishment shall constitute reasonable cause for the detention of the person so exiting by the owner or operator of the establishment or by an agent or employee of the owner or operator, provided notice has been posted to advise patrons that such a device is being utilized. Each such detention shall be made only in a reasonable manner and only for a reasonable period of time sufficient for any inquiry into the circumstances surrounding the activation of the device or for the recovery of goods.

(b) The taking into custody and detention by a law enforcement officer, merchant or merchant's employee, if in compliance with the requirements of this section, does not render such law enforcement officer, merchant or merchant's employee criminally or civilly liable for false arrest, false imprisonment, unlawful detention, malicious prosecution, intentional infliction of emotional distress or defamation.

HISTORY: Laws, 2001, ch. 558, § 1, eff from and after July 1, 2001.

§ 97-23-94. Aiding and abetting shoplifting by minor; penalty.

(1) In addition to any other offense and penalty provided by law, it shall be unlawful for any person eighteen (18) years of age or older to encourage, aid

or abet any person under the age of eighteen (18) years to commit the crime of shoplifting as defined in Section 97-23-93. In addition to any other penalty provided by law, any person who violates this section shall be punished as follows:

(a) Upon a first conviction the defendant shall be guilty of a misdemeanor and fined not more than Seven Hundred Fifty Dollars ($750.00), or punished by imprisonment not to exceed thirty (30) days, or by both such fine and imprisonment.

(b) Upon a second conviction the defendant shall be guilty of a misdemeanor and fined not more than One Thousand Dollars ($1,000.00) or punished by imprisonment not to exceed ninety (90) days, or by both such fine and imprisonment.

(c) Upon a third or subsequent conviction the defendant shall be guilty of a felony and fined One Thousand Dollars ($1,000.00), or imprisoned for a term not exceeding three (3) years, or by both such fine and imprisonment.

(2) In addition to the penalties prescribed in subsection (1) of this section, the court is authorized to require the defendant to make restitution to the owner of the property where shoplifting occurred in an amount equal to twice the value of such property.

HISTORY: Laws, 1994, ch. 595, § 6; Laws, 2014, ch. 457, § 30, eff from and after July 1, 2014.

§ 97-23-94.1. Punishment for violation of Section 97-23-94.

Any person aged eighteen (18) years or older who encourages, aids or abets any person under the age of eighteen (18) years to violate Section 97-23-93 shall be punished as provided in Section 97-23-94 and as otherwise provided by law.

HISTORY: Laws, 1994, ch. 595, § 8, eff from and after July 1, 1994.

§ 97-23-95. Shoplifting; detention of suspect for questioning without incurring civil liability.

If any person shall commit or attempt to commit the offense of shoplifting, or if any person shall wilfully conceal upon his person or otherwise any unpurchased goods, wares or merchandise held or owned by any store or mercantile establishment, the merchant or any employee thereof or any peace or police officer, acting in good faith and upon probable cause based upon reasonable grounds therefor, may question such person in a reasonable manner for the purpose of ascertaining whether or not such person is guilty of shoplifting as defined herein. Such questioning of a person by a merchant, merchant's employee or peace or police officer shall not render such merchant, merchant's employee or peace or police officer civilly liable for slander, false arrest, false imprisonment, malicious prosecution, unlawful detention or otherwise in any case where such merchant, merchant's employee or peace or police officer acts in good faith and upon reasonable grounds to believe that the person questioned is committing or attempting to commit the crime of shoplifting.

HISTORY: Laws, 1988, ch. 556, § 2, eff from and after July 1, 1988.

JUDICIAL DECISIONS

I. UNDER CURRENT LAW

ANALYSIS

1. In general.
2. Burden of proof.
3. Application.
4. Instructions to jury.
5.-10. [Reserved for future use.]

1. In general.

Two elements must be shown in order for a store owner to claim the qualified immunity afforded under the statute: first, there must be proof of a good faith basis and probable cause based upon reasonable grounds to detain and question the customer; and second, there must be proof that the detention and questioning of the customer was done in a reasonable manner. Turner v. Hudson Salvage, 709 So. 2d 425, 1998 Miss. LEXIS 97 (Miss. 1998).

Mississippi statute governing qualified immunity of merchants from liability for malicious prosecution of suspected shoplifters protected only questioning for purpose of ascertaining whether plaintiff shoplifted; any other actions by store owner, including insistence of plaintiff's arrest and filing of affidavit, would not fall within scope of qualified immunity. Lyon v. Fred's, Inc., 971 F. Supp. 239, 1997 U.S. Dist. LEXIS 10562 (N.D. Miss. 1997), aff'd, 176 F.3d 478, 1999 U.S. App. LEXIS 5489 (5th Cir. Miss. 1999).

2. Burden of proof.

The burden of proof rests upon the party asserting the privilege to show that probable cause existed to detain and question the suspected shoplifter; mere suspicion or conjecture does not meet the probable cause requirement. Turner v. Hudson Salvage, 709 So. 2d 425, 1998 Miss. LEXIS 97 (Miss. 1998).

3. Application.

Where a store employee watched as a store security guard detained and questioned the plaintiff on suspicion of shoplifting and yet failed to find out what the security guard discovered before he detained the plaintiff a second time, the defendant store exceeded the immunity provided under the statute. Turner v. Hudson Salvage, 709 So. 2d 425, 1998 Miss. LEXIS 97 (Miss. 1998).

4. Instructions to jury.

In a defamation action arising from an incident in which the plaintiff was asked by employees of the defendant to show his receipt for cigarettes after he left the defendant's store, the court properly instructed the jury with regard to the defendant's right to question customers upon suspicion of shoplifting. Davis v. Wal-Mart Stores, Inc., 724 So. 2d 907, 1998 Miss. LEXIS 604 (Miss. 1998).

5.-10. [Reserved for future use.]

II. UNDER FORMER LAW

11. Under former § 97-23-51.

In an action against a store for defamation and slander following an accusation of shoplifting, refusal of the trial court to define in its charge to the jury "probable cause," "reasonable grounds," "reasonable manner," or "good faith," constituted reversible error, since former § 97-23-51 protected the defendant store from liability, if all those elements were present, and the defendant store raised each of them as an affirmative defense. McWilliams v. Watkins, 430 So. 2d 854, 1983 Miss. LEXIS 2611 (Miss. 1983).

Former § 97-23-51, authorizing a merchant to detain a suspect for questioning, protects the merchant from civil liability for stopping, detaining momentarily, and questioning a suspect in a reasonable manner to determine if he is guilty of shoplifting, but not from subsequent institution of criminal proceedings. Owens v.

Kroger Co., 430 So. 2d 843, 1983 Miss. LEXIS 2573 (Miss. 1983).

In a damage action against a store by a customer who had been falsely accused of shoplifting, the trial court committed reversible error in directing a verdict in favor of the store, where there was conflicting evidence as to whether the store manager had acted in good faith and upon probable cause based upon reasonable grounds in ascertaining whether the customer, who did not speak English, was guilty of shoplifting. Jarjoura v. Fred's One & Two Dollar Store, Inc., 370 So. 2d 696, 1979 Miss. LEXIS 2016 (Miss. 1979).

Where the facts are in dispute, the question of probable cause to stop and question a suspected shoplifter is for the court's determination, but under disputed facts, such question is one for the jury. Butler v. W. E. Walker Stores, Inc., 222 So. 2d 128, 1969 Miss. LEXIS 1516 (Miss. 1969).

In an action brought by a shopper who alleged that the manager of a store had unlawfully stopped her and searched her purse without cause, an instruction in which mere suspicion was made the basis of probable cause to believe that the plaintiff was attempting to commit the act of shoplifting, was in error. Butler v. W. E. Walker Stores, Inc., 222 So. 2d 128, 1969 Miss. LEXIS 1516 (Miss. 1969).

In order for a communication to be privileged the person making it must be careful to go no further than his interest or duties require, and a store manager who, instead of making inquiry in a reasonable manner of his cashier, accused the plaintiff of stealing a bar of soap exceeded the qualified privilege provided by this section [Code 1942, § 2374-04], and he and his employer thereby became liable to the party so unjustly accused. Southwest Drug Stores, Inc. v. Garner, 195 So. 2d 837, 1967 Miss. LEXIS 1457 (Miss. 1967).

Mere suspicion, not grounded on definite information, does not justify detention of a customer. J. C. Penney Co. v. Cox, 246 Miss. 1, 148 So. 2d 679, 1963 Miss. LEXIS 409 (Miss. 1963).

The qualified privilege under the statute [Code 1942, § 2374-04] does not give the merchant the right to embarrass or harass a suspect in public view of everyone in a rude manner, as by halting the customer on the store steps, demanding pay, and to be shown the contents of her purse and a paper bag. J. C. Penney Co. v. Cox, 246 Miss. 1, 148 So. 2d 679, 1963 Miss. LEXIS 409 (Miss. 1963).

The burden of proof is on one asserting the right to question a customer believed to be a shoplifter, to show probable cause based upon reasonable ground. J. C. Penney Co. v. Cox, 246 Miss. 1, 148 So. 2d 679, 1963 Miss. LEXIS 409 (Miss. 1963).

RESEARCH REFERENCES

ALR.

Defamation: Actionability of accusation or imputation of shoplifting. 29 A.L.R.3d 961.

Construction and effect, in false imprisonment action, of statute providing for detention of suspected shoplifters. 47 A.L.R.3d 998.

Liability of storekeeper for injury to customer arising out of pursuit of shoplifter. 14 A.L.R.4th 950.

Am. Jur.

32 Am. Jur. 2d, False Imprisonment § 20.

50 Am. Jur. 2d, Libel and Slander § 179.

10 Am. Jur. Pl & Pr Forms (Rev), False Imprisonment, Form 21 (complaint, petition, or declaration – unreasonable detention and search of customer on accusation of shoplifting – against store and store manager).

10 Am. Jur. Pl & Pr Forms, Rev, False Imprisonment, Forms 21.1, 22.1, 22.

10 Am. Jur. Pl & Pr Forms (Rev), False Imprisonment, Form 22.2 (Complaint, petition, or declaration – Unreasonable detention and search of customer on accusation of shoplifting).

10 Am. Jur. Pl & Pr Forms (Rev), False Imprisonment, Form 22.3 (Complaint, petition, or declaration – Unreasonable detention and search of customer on accusation of shoplifting).

16A Am. Jur. Pl & Pr Forms (Rev), Libel

and Slander, Form 67.1 (Allegation – Innuendo – False charge theft – By Store against customer).

16A Am. Jur. Pl & Pr Forms (Rev), Libel and Slander, Form 70.1 (Allegation – Innuendo – False charge – Plaintiff's character).

20 Am. Jur. Pl & Pr Forms (Rev), Premises Liability, Form 21.1 (complaint by customer of self-service retail store; customer knocked down by shoplifter fleeing from store security guard).

§ 97-23-96. Civil remedy for shoplifting violations; written demand prior to commencing civil proceedings; recovery from parents or legal guardians of minors; costs.

(1) Any person who proves by clear and convincing evidence that he has been injured in any fashion by reason of any violation of the provisions of Section 97-23-93, Mississippi Code of 1972, has a cause of action for threefold the actual damages sustained or damages in the amount of Two Hundred Dollars ($200.00), whichever is greater, reasonable attorney's fees and court costs in the trial and in any proceedings in appellate courts. The recovery of stolen goods regardless of condition shall not affect the right to the minimum recovery provided herein.

(2) Before filing an action for damages under this section, the person claiming injury must make a written demand for Two Hundred Dollars ($200.00) or threefold the actual damages sustained, whichever is greater, of the person or accused liable for damages under this section. If the accused to whom a written demand is made complies with such demand within thirty (30) days after receipt of the demand, he shall be given a written release from further civil liability for the specific act of shoplifting by the victim making the written demand.

(3) Any victim who has a cause of action under this section may recover the damages allowed under this section from the parents or legal guardian of any unemancipated minor who lives with his parents or legal guardian and who is liable for damages under this section if it is proven that the parents or legal guardian had knowledge of the minor's intent to violate the provisions of Section 97-23-93 or aided and abetted the minor in such violations. Foster parents shall not be liable for the acts of children placed with them.

Nothing in this section shall in any way be construed as to abrogate, compromise or violate any minor's right to confidentiality under any other provision of the Mississippi Code of 1972 or otherwise.

(4) In no event shall punitive damages be awarded under this section.

(5) In awarding damages, attorney's fees, expenses or costs under this section, the court shall not consider the ability of the opposing party to pay such fees and costs. Nothing under this section shall be interpreted as limiting any right to recover damages, attorney's fees, expenses or costs provided under other provisions of law.

HISTORY: Laws, 1991, ch. 498, § 1, eff from and after July 1, 1991.

§ 97-23-97. Scalping of admission tickets at college events held on state property.

It shall be unlawful for any admission ticket to any athletic contest of any college or university of the State of Mississippi or for any admission ticket to any entertainment event held on state property to be sold for a price in excess of the price printed on the face of the ticket.

It shall be unlawful to sell any such admission tickets at any place or in any manner except at such places and in such manner as designated by the proper authorities issuing such tickets.

Nothing in this section shall prohibit a private individual from selling tickets bought for personal use at a price not to exceed the price on the face of the ticket.

Any person, firm or corporation violating any of the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished as for a misdemeanor.

HISTORY: Laws, 1990, ch. 342, § 1, eff from and after July 1, 1990.

§ 97-23-99. Giving away of merchandise by employee without authorization of merchant.

It shall be unlawful for any employee of a merchant engaged in the sale of goods to the public to willfully give away any merchandise of a value of less than Two Hundred Fifty Dollars ($250.00) intended for sale without receiving full payment for such merchandise or to give away any merchandise without the specific authorization of the merchant. Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined not more than One Thousand Dollars ($1,000.00) or imprisoned for not more than one (1) year or both.

HISTORY: Laws, 1996, ch. 330, § 1, eff from and after July 1, 1996.

Cross References — Embezzlement, generally, see § 97-23-19.

§ 97-23-101. Laundering of monetary instruments; offense; penalties; effect of federal conviction.

(1)(a) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity:

(i)1. With the intent to promote the carrying on of specified unlawful activity; or

2. With intent to engage in conduct constituting a violation of Section 7201 or 7206 of the Internal Revenue Code of 1986; or

(ii) Knowing that the transaction is designed in whole or in part:

1. To conceal or disguise the nature, the location, the source, the

ownership, or the control of the proceeds of specified unlawful activity; or

2. To avoid a transaction reporting requirement under state or federal law,

shall be sentenced to a fine of not more than Five Hundred Thousand Dollars ($500,000.00) or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty (20) years, or both.

(b) Whoever transports, transmits, or transfers, or attempts to transport, transmit, or transfer a monetary instrument or funds from a place in the state to or through a place outside the state or to a place in the state from or through a place outside the state;

(i) With the intent to promote the carrying on of specified unlawful activity; or

(ii) Knowing that the monetary instrument or funds involved in the transportation represent the proceeds of some form of unlawful activity and knowing that such transportation is designed in whole or in part:

1. To conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

2. To avoid a transaction reporting requirement under state or federal law,

shall be sentenced to a fine of Five Hundred Thousand Dollars ($500,000.00) or twice the value of the monetary instrument or funds involved in the transportation, whichever is greater, or imprisonment for not more than twenty (20) years, or both.

(c) Whoever, with the intent:

(i) To promote the carrying on of specified unlawful activity;

(ii) To conceal or disguise the nature, location, source, ownership, or control of property believed to be the proceeds of specified unlawful activity; or

(iii) To avoid a transaction reporting requirement under state or federal law,

conducts or attempts to conduct a financial transaction involving property represented by a law enforcement officer to be the proceeds of specified unlawful activity, or property used to conduct or facilitate specified unlawful activity, shall be fined under this title or imprisoned for not more than twenty (20) years, or both. For purposes of this paragraph, the term "represented" means any representation made by a law enforcement officer or by another person at the direction of, or with the approval of, a government official authorized to investigate or prosecute violations of this section.

(2) Whoever conducts or attempts to conduct a transaction described in subsection (1)(a), or a transportation described in subsection (1)(b), is liable to the state for a civil penalty of not more than the greater of:

(a) The value of the property, funds, or monetary instruments involved in the transaction; or

(b) Ten Thousand Dollars ($10,000.00).

(3) As used in this section:

(a) The term "knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity" means that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under state or federal law;

(b) The term "conducts" includes initiating, concluding, or participating in initiating, or concluding a transaction;

(c) The term "transaction" includes a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected;

(d) The term "financial transaction" means a transaction involving the movement of funds by wire or other means or involving one or more monetary instruments, which in any way or degree affects interstate or foreign commerce, or a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree;

(e) The term "monetary instruments" means coin or currency of the United States or of any other country, travelers' checks, personal checks, bank checks, money orders, investment securities in bearer form or otherwise in such form that title thereto passes upon delivery, and negotiable instruments in bearer form or otherwise in such form that title thereto passes upon delivery;

(f) The term "financial institution" has the definition given that term in Section 5312(a)(2) of Title 31, United States Code, and the regulations promulgated thereunder.

(4) Nothing in this section shall supersede any provision of federal, state, or other law imposing criminal penalties or affording civil remedies in addition to those provided for in this section.

(5) Violations of this section may be investigated by the Attorney General.

(6) If a person is convicted of a federal violation of laundering of monetary instruments, such person shall not be prosecuted under this section for the same set of facts which resulted in the federal conviction.

HISTORY: Laws, 1998, ch. 475, § 1, eff from and after July 1, 1998.

JUDICIAL DECISIONS

ANALYSIS

1. Sufficiency of the evidence.
2. Indictments.

1. Sufficiency of the evidence.

2. Indictments.

Indictment charging a person with

money laundering under Miss. Code Ann. § 97-23-101(1)(b)(ii)(1) was required to specify the "unlawful activity" from which the illegal proceeds were alleged to have derived, and violation of this requirement may be cured only where the prosecution demonstrated that it otherwise provided timely notice to defendant of the alleged illegal activity, and that the notice clearly and sufficiently provided defendant a fair opportunity to prepare a defense to the charges; the omission of the "specified unlawful activity" in defendant's indictment was harmless error which did not render the trial fundamentally unfair. Tran v. State, 962 So. 2d 1237, 2007 Miss. LEXIS 475 (Miss. 2007), cert. denied, 553 U.S. 1054, 128 S. Ct. 2472, 171 L. Ed. 2d 769, 2008 U.S. LEXIS 4212 (U.S. 2008).

One defendant's conviction of money laundering was inappropriate under Miss. Code Ann. § 97-23-101(1)(b)(ii)(1) because the state failed to meet its burden of proof showing that defendant knew that the money at issue was hidden in a gas tank or that he knew that it represented proceeds of specified unlawful activity. Tran v. State, 963 So. 2d 1, 2006 Miss. App. LEXIS 394 (Miss. Ct. App. 2006), aff'd, 962 So. 2d 1237, 2007 Miss. LEXIS 475 (Miss. 2007).

§ 97-23-103. Home repair fraud; definitions; exceptions; penalties.

(1) As used in this section, unless the context clearly requires otherwise:

(a) "Home repair" means the fixing, replacing, altering, converting, modernizing, improving of or the making of an addition to any real property primarily designed or used as a residence.

(i) Home repair shall include the construction, installation, replacement or improvement of driveways, swimming pools, porches, kitchens, chimneys, chimney liners, garages, fences, fallout shelters, central air conditioning, central heating, boilers, furnaces, hot water heaters, electrical wiring, sewers, plumbing fixtures, storm doors, storm windows, awnings, carpets and other improvements to structures within the residence or upon the land adjacent thereto.

(ii) Home repair shall not include the sale of goods or materials by a merchant who does not directly or through a subsidiary perform any work or labor in connection with the installation or application of the goods or materials; the repair, installation, replacement or connection of any home appliance, including, but not limited to, disposals, refrigerators, ranges, garage door openers, television antennas, washing machines, telephones or other home appliances when the person replacing, installing, repairing or connecting such home appliance is an employee or agent of the merchant that sold the home appliance; or landscaping.

(b) "Person" means any individual, partnership, corporation, business, trust or other legal entity.

(c) "Residence" means a single or multiple family dwelling, including, but not limited to, a single family home, apartment building, condominium, duplex, townhouse or mobile home which is used or intended to be used by its occupants as their dwelling place.

(2) A person commits the offense of home repair fraud when he knowingly:

(a) Enters into an agreement or contract, written or oral, with a person for home repair, and he knowingly:

(i) Misrepresents a material fact relating to the terms of the contract or agreement or the preexisting or existing condition of any portion of the property involved, or creates or confirms another's impression which is false and which he does not believe to be true, or promises performance which he does not intend to perform or knows will not be performed;

(ii) Uses or employs any deception, false pretense or false promises in order to induce, encourage or solicit such person to enter into any contract or agreement;

(iii) Misrepresents or conceals either his real name, the name of his business or his business address; or

(iv) Uses deception, coercion or force to obtain the victim's consent to modification of the terms of the original contract or agreement;

(b) Damages the property of a person with the intent to enter into an agreement or contract for home repair; or

(c) Misrepresents himself or another to be an employee or agent of any unit of the federal, state or municipal government or any other governmental unit, or an employee or agent of any public utility, with the intent to cause a person to enter into, with himself or another, any contract or agreement for home repair.

(3) Intent and knowledge shall be determined by an evaluation of all circumstances surrounding a transaction and the determination shall not be limited to the time of contract or agreement.

(4) Substantial performance shall not include work performed in a manner of little or no value or work that fails to comply with the appropriate municipal, county, state or federal regulations or codes.

(5) Violation of this section shall be punished as follows:

(a) A first conviction under this section shall be a misdemeanor when the amount of the fraud is less than Five Thousand Dollars ($5,000.00) and shall be punished by a fine not to exceed One Thousand Dollars ($1,000.00) or imprisonment in the county jail not to exceed six (6) months, or both.

(b) A second or subsequent conviction under this section shall be punished as follows:

(i) As a felony punishable by imprisonment in the custody of the Department of Corrections not to exceed two (2) years when the amount of the fraud is more than One Thousand Dollars ($1,000.00) but less than Five Thousand Dollars ($5,000.00).

(ii) As a misdemeanor punishable by imprisonment in the county jail for not more than six (6) months when the amount of the fraud is One Thousand Dollars ($1,000.00) or less.

(c) A first or subsequent conviction under this section shall be a felony when the amount of the fraud is over Five Thousand Dollars ($5,000.00) and shall be punished as follows:

(i) By imprisonment in the custody of the Department of Corrections not to exceed five (5) years or a fine not to exceed Ten Thousand Dollars ($10,000.00) or both when the amount of the fraud is Five Thousand Dollars ($5,000.00) or more, but less than Ten Thousand Dollars ($10,000.00).

(ii) By imprisonment in the custody of the Department of Corrections not to exceed ten (10) years or a fine not to exceed Ten Thousand Dollars ($10,000.00) when the amount of the fraud is Ten Thousand Dollars ($10,000.00) or more.

(6) In addition to any other sentence it may impose, the court shall order that the defendant shall make restitution to the victim, either within a specified period of time or in specified installments. The order shall not be enforceable during the period of imprisonment unless the court expressly finds that the defendant has assets to pay the amounts ordered at the time of sentencing. Intentional refusal to obey the restitution order or a failure by a defendant to make a good faith effort to make such restitution may be considered a violation of the defendant's probation and may be cause for revocation of his probation or suspension of sentence.

HISTORY: Laws, 2003, ch. 499, § 10; Laws, 2006, ch. 348, § 1, eff from and after passage (approved Mar. 13, 2006).

§ 97-23-105. Falsely using or producing retail sales receipts and universal product codes.

(1) A person who, with intent to cheat or defraud a retailer, possesses, uses, utters transfers, makes, alters, counterfeits or reproduces a retail sales receipt or a universal product code label commits a misdemeanor which shall be punished, upon conviction thereof, by imprisonment not to exceed one (1) year, a fine not to exceed Five Thousand Dollars ($5,000.00), or both.

(2) A person who, with intent to cheat or defraud a retailer, possesses fifteen (15) or more retail sales receipts or universal product code labels or possesses a device the purpose of which is to manufacture fraudulent retail sale receipts or universal product code labels commits a felony punishable, upon conviction thereof, by imprisonment not to exceed five (5) years, a fine not to exceed Ten Thousand Dollars ($10,000.00), or both.

HISTORY: Laws, 2005, ch. 511, § 3, eff from and after July 1, 2005.

§ 97-23-107. Residential mortgage fraud; elements of offense; establishing venue; penalties; forfeiture of all property used in or obtained through violation of section; pattern of residential mortgage fraud.

(1) A person commits the offense of residential mortgage fraud when, with the intent to defraud such person, he:

(a) Knowingly makes any deliberate misstatement, misrepresentation or omission during the mortgage lending process with the intention that it be relied on by a licensed mortgage broker or mortgage lender, borrower or any other party to the mortgage lending process;

(b) Knowingly uses or facilitates the use of any deliberate misstatement, misrepresentation or omission, knowing the same to contain a misstatement, misrepresentation or omission, during the mortgage lending process with the intention that it be relied on by a company, borrower, or any other party to the mortgage lending process;

(c) Receives any proceeds or any other funds in connection with a residential mortgage closing that such person knew resulted from a violation of paragraph (a) or (b) of this subsection;

(d) Conspires to violate any of the provisions of paragraph (a), (b) or (c) of this subsection; or

(e) Files or causes to be filed with the chancery clerk of any county of this state any deed of trust such person knows to contain a deliberate misstatement, misrepresentation or omission.

(2) An offense of residential mortgage fraud shall not be predicated solely upon information lawfully disclosed under federal disclosure laws, regulations and interpretations related to the mortgage lending process.

(3) For the purposes of venue under this section, any violation of this section shall be considered to have been committed:

(a) In the county in which the residential property for which a mortgage loan is being sought is located;

(b) In any county in which any act was performed in furtherance of this violation;

(c) In any county in which any person alleged to have violated this chapter had control or possession of any proceeds of this violation;

(d) If a closing occurred, in any county in which the closing occurred; or

(e) In any county in which a document containing a deliberate misstatement, misrepresentation or omission is filed with the chancery clerk.

(4) District attorneys and the Attorney General shall have the authority to conduct the criminal investigation of all cases of residential mortgage fraud under this section.

(5)(a) Any person violating this section shall be guilty of a felony and, upon conviction, shall be punished by imprisonment for not less than one (1) year nor more than ten (10) years, by a fine not to exceed Five Thousand Dollars ($5,000.00), or both.

(b) If a violation of this section involves engaging or participating in a pattern of residential mortgage fraud or a conspiracy or endeavor to engage or participate in a pattern of residential mortgage fraud, the violation shall be punishable by imprisonment for not less than three (3) years nor more than twenty (20) years, by a fine not to exceed One Hundred Thousand Dollars ($100,000.00), or both.

(c) Each residential property transaction subject to a violation of this section shall constitute a separate offense and shall not merge with any other crimes set forth in this section.

(6) All real and personal property of every kind used or intended for use in the course of, derived from, or realized through a violation of this section shall be subject to forfeiture to the state. Forfeiture shall be had by the same procedure as outlined in Sections 97-43-9 and 97-43-11. District attorneys and the Attorney General may commence forfeiture proceedings under this section.

(7) For purposes of this section, the term "pattern of residential mortgage fraud" means one or more violations of subsection (1) of this section that involve two (2) or more residential properties which have the same or similar intents, results, accomplices, victims or methods of commission or otherwise are interrelated by distinguishing characteristics.

HISTORY: Laws, 2007, ch. 581, § 31, eff from and after July 1, 2007.

§ 97-23-109. Mass picketing by union which obstructs or interferes with free ingress or egress of any person to and from any place of business or private residence; injunctive relief without showing of irreparable harm for business or property owner.

(1)(a) It shall be unlawful for any union, labor union or agency thereof, singly or in concert with others, to engage in mass picketing or mass demonstrations in such a manner as to obstruct or unreasonably interfere with free ingress or egress of any person to and from any place of business or act or conduct themselves in any manner that would have the effect as to obstruct or unreasonably interfere with free use of business entryways, streets, sidewalks or rights-of-ways adjacent or contiguous to a business or has or intends the effect of violence or intimidation, near or contiguous to the business's customers.

(b) It shall be unlawful for any union, labor union or agency thereof, singly or in concert with others, to engage in mass picketing or mass demonstrations in such a manner as to obstruct or unreasonably interfere with free ingress or egress of any person to and from any private residences or act or conduct themselves in any manner that would have the effect as to obstruct or unreasonably interfere with free use of residential driveways, streets, sidewalks or rights-of-ways adjacent to a residence, or unreasonably interfere with the resident's right to quiet enjoyment, or where such picketing of a residence has or intends the effect of violence or intimidation, near contiguous to a residence.

(2) It shall be unlawful for any union, labor union or agency thereof, singly or in concert with others to use equipment or any other object to obstruct or unreasonably interfere with free ingress or egress of any person to and from any private residences or place of business, or act or conduct themselves in any manner that would have the effect as to obstruct or unreasonably interfere with free use of residential driveways, streets, sidewalks or rights-of-ways adjacent or contiguous thereto a residence, or as to obstruct or unreasonably interfere with free use of business entryways, streets, sidewalks or rights-of-ways adjacent to or contiguous to a business, or interfere in any other manner described in subsection (1) of this section.

(3) Each individual person guilty of violating this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than Five Hundred Dollars ($500.00), or imprisoned in jail not more than six (6) months, or both such fine and imprisonment.

(4) It shall be no defense under state law that an organization or individual engages in mass picketing or mass demonstrations to further an objective in the context of a labor dispute.

(5) For purposes of this section, "mass picketing" and "mass demonstration" means a picket actually prevents an individual from the reasonable free ingress to and egress from an entrance to any place of employment or place of residence, either by obstructing the free ingress and egress with the person's body or by placing a vehicle or other physical obstruction for such purpose. The picketing prevents the pursuit of any entrance to a private residence, lawful work or employment.

(6) If, in the context of a labor dispute, an organization or individual is engaged in mass picketing at a business or private residence, the business or property owner shall be able to seek injunctive relief without the showing of irreparable harm. Upon proper showing, a person or business who is injured or threatened with injury shall be afforded relief in any court of competent jurisdiction to enjoin any behavior made unlawful. Nothing in this section shall be interpreted to alter or change the protections afforded under the federal labor laws, including the National Labor Relations Act or the Labor Management Relations Act.

(7) Nothing in this section shall be construed to conflict with any federal law to the contrary or Section 97-7-63, Mississippi Code of 1972.

(8) Nothing in the provisions of this section shall be construed to infringe and impede upon any individual's First Amendment right.

HISTORY: Laws, 2014, ch. 498, § 1, eff from and after July 1, 2014.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected two typographical errors. In (1)(a), a comma was substituted for "to" following "labor union or agency thereof" and in (6), "Act" was inserted at the end of the paragraph. The Joint Committee ratified the corrections at its July 24, 2014, meeting.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

Federal Aspects— National Labor Relations Act, see 29 USCS § 151 et seq. Labor Management Relations Act, see 29 USCS § 141 et seq.

§ 97-23-111 Automated sales suppression devices, zappers and phantom-ware programs prohibited; definitions; penalties.

(1) As used in this section, the following words and phrases shall have the meanings ascribed herein unless the context clearly indicates otherwise:

(a) "Automated sales suppression device" or "zapper" means a software program carried on a memory stick or other flash memory data storage device, or on a removable optical disc or accessed through an Internet link, or by any other means, that falsifies the electronic records of electronic cash registers and other point-of-sale systems, including, but not limited to, transaction data and transaction reports.

(b) "Electronic cash register" means a device that keeps an electronic record, register or supporting documentation, through the use of an electronic device or computer system, of data for the purpose of computing, compiling or processing retail sales transaction data, and includes a cash register or any other point-of-sale system.

(c) "Phantom-ware" means a hidden or concealed programming option embedded in the operating system of, or hardwired into, an electronic cash register that can be used to create a second or alternate set of records or to eliminate or manipulate transaction records, which may or may not be preserved in digital format, to represent either the actual or the manipulated record of transactions.

(d) "Transaction data" means data relating to a transaction which includes, but is not limited to, data identifying each item purchased by a customer; the price for each item; a taxability determination for each item; a segregated tax amount for each of the taxed items; the amount of cash or credit tendered; the net amount returned to a customer in change; the date and time of a purchase; the name, address and identification number of a vendor; and the receipt or invoice number of a transaction.

(e) "Transaction report" means:

(i) A report that contains, but is not limited to, documentation of the sales, taxes or fees collected, media totals, and discount voids of an electronic cash register and that is printed on cash register tape or other hard copy at the end of a day or shift;

(ii) A report that documents every action performed on or by an electronic cash register and that is stored electronically; and/or

(iii) Any variation of reports described in subparagraphs (i) and (ii) of this paragraph (e).

(2) It shall be unlawful for any person to knowingly create, design, manufacture, sell, purchase, lease, install, update, repair, service, transfer, use, or possess or otherwise make available any automated sales suppression device, zapper or phantom-ware.

(3) Any person who violates the provisions of this section shall be guilty of a felony and, upon conviction thereof, shall be fined not more than One Hundred Thousand Dollars ($100,000.00) or imprisoned for not more than fifteen (15) years, or both.

(4) An automated sales suppression device, zapper or phantom-ware and any device containing such device or software shall be contraband and shall be forfeited to the state.

HISTORY: Laws, 2018, ch. 414, § 1, eff from and after July 1, 2018.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

CHAPTER 25.

OFFENSES AFFECTING RAILROADS, PUBLIC UTILITIES AND CARRIERS

Sec.	
97-25-1.	Electric power lines and facilities; tampering, injury or unauthorized use; stealing or destroying fixtures and equipment.
97-25-3.	Meters; tampering with electric, gas or water meters.
97-25-4.	Railroads; offenses committed on railroad right-of-way.
97-25-5.	Railroads; destroying crossing-sign, gate or warning-signals.
97-25-7.	Railroads; driving vehicle or livestock on track.
97-25-9.	Railroads; embezzlement of tickets.
97-25-11.	Railroads; stealing tickets.
97-25-13.	Railroads; intoxication of engineer or conductor.
97-25-15.	Railroads; jumping on or off cars in motion.
97-25-17.	Railroads; leaving switch open or improperly placed.
97-25-19.	Railroads; locomotive to be stopped before entering or crossing track of another company.
97-25-21.	Railroads; obstructing or injuring.
97-25-23.	Railroads; obstructing or injuring; derailing cars.
97-25-25.	Railroads; seizing and running locomotive.
97-25-27.	Railroads; signaling or unlawfully interfering with train.
97-25-29.	Railroads; stealing a ride.
97-25-31.	Railroads; stealing animal killed or wounded by railroad.
97-25-33.	Railroads; not to destroy or bury animal killed by train until report made.
97-25-35.	Railroads; stealing or interfering with communications or signaling equipment.
97-25-37.	Railroads; stopping or standing at crossing.
97-25-39.	Railroads; uncoupling locomotives and cars by persons not employed by railroad.
97-25-41.	Railroads; wilfully shooting from or on moving train.
97-25-43.	Railroads, public utilities, and carriers; conspiracy to impede.
97-25-45.	Railroads, public utilities, and carriers; obstructing or impeding by intimidation, force or violence.
97-25-47.	Railroad trains, buses, trucks, motor vehicles, depots, stations, and other transportation facilities; wilfully shooting or throwing at.
97-25-49.	Wrongful access to telecommunications messages by cellular telephone; inadmissibility of information obtained in violation of this section.
97-25-51.	Telegraphs and telephones; governmental messages.
97-25-53.	Telegraphs and telephones; injuring or destroying lines; interrupting communications; stealing or destroying fixtures.
97-25-54.	Theft of telephone and other communication services prohibited; definitions; manufacture and possession of devices to facilitate theft prohibited; penalties.
97-25-55.	Aircraft piracy; boarding aircraft with dangerous or deadly weapon or instrument.
97-25-57.	Nuclear sabotage.
97-25-59.	Impeding critical infrastructure; critical infrastructure trespass; penalties.

§ 97-25-1. Electric power lines and facilities; tampering, injury or unauthorized use; stealing or destroying fixtures and equipment.

(1) Any person who shall intentionally in anywise obstruct, injure, break, tamper with or destroy or in any manner interrupt any electric power line or the transmission of electric current in connection with such line, or who shall make or use electric power from any unauthorized connection with such line, or who shall intentionally injure or destroy any of the posts, wires, insulators, fixtures, equipment, installations or other things belonging to any electric power system, or used in connection with the furnishing of electric power service, shall be guilty of a misdemeanor and such person shall, on conviction, be fined not less than two hundred fifty dollars ($250.00) nor more than seven hundred fifty dollars ($750.00), or imprisoned in the county jail for not exceeding six (6) months, or both.

(2) Every person who shall be convicted of taking and carrying away, feloniously, such property as listed in subsection (1) of this section, of the value of one hundred dollars ($100.00) or more, shall be guilty of grand larceny and shall be imprisoned in the penitentiary for a term not exceeding five (5) years, or shall be fined not more than one thousand dollars ($1,000.00), or both.

(3) If any person shall feloniously take, steal and carry away any such property as listed in subsection (1) of this section, under the value of one hundred dollars ($100.00), he shall be guilty of petit larceny and shall be punished by imprisonment in the county jail not exceeding three (3) months, or by fine not exceeding one hundred dollars ($100.00), or both.

HISTORY: Codes, 1942, § 2114.5; Laws, 1960, ch. 252; Laws, 1981, ch. 541, § 1, eff from and after July 1, 1981.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am. Jur.
50 Am. Jur. 2d, Larceny § 62.

CJS.
29 C.J.S., Electricity § 124.
52B C.J.S., Larceny §§ 20, 21, 27.

§ 97-25-3. Meters; tampering with electric, gas or water meters.

Whoever, intentionally, by any means or device, prevents electric current, water or gas from passing through any meter or meters belonging to any person, firm or corporation engaged in the manufacture, sale or distribution of electricity, water or gas for lighting, power or other purposes, furnished such persons to register current or electricity, water or gas, passing through meters, or intentionally prevents the meter from duly registering the quantity of electricity, water or gas supplied, or in any manner interferes with its proper action or just registration, or, without the consent of such person, firm or corporation, intentionally diverts any electrical current from any wire or cable, or water or gas from any pipe or main of such person, firm or corporation, or otherwise intentionally uses, or causes to be used, without the consent of such person, firm or corporation, any electricity or gas manufactured, or water produced or distributed, by such person, firm or corporation, or any person, firm or corporation who retains possession of, or refuses to deliver any meter or meters, lamp or lamps, or other appliances which may be, or may have been, loaned them by any person, firm or corporation for the purpose of furnishing electricity, water or gas, through the same, with the intent to defraud such person, firm or corporation, shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than One Hundred Dollars ($100.00) and not more than Five Hundred Dollars ($500.00), or by imprisonment in the county jail not more than three (3) months, or by both fine and imprisonment in the discretion of the court.

The presence at any time on or about such meter or meters, wire, cable, pipe or main of any device or unauthorized meter or pipe or wire resulting in the diversion of electric current, water or gas, as above defined, or resulting in the prevention of the proper action or just registration of the meter or meters as above set forth, the same being knowingly or intentionally installed, shall constitute prima facie evidence of knowledge on the part of the person, firm or corporation having custody or control of the room or place where such device or pipe or wire is located, or the existence thereof and the effect thereof, and shall constitute prima facie evidence of the intention on the part of such person, firm or corporation to defraud and shall bring such person, firm or corporation prima facie within the scope, meaning and penalties of this section.

Provided further, that if any person, firm or corporation engaged in the selling or delivering of any electric current, water or gas, to a consumer shall knowingly cause to be installed any meter or meters intentionally adjusted or regulated so as to cause such meter or meters to register a greater amount of such electric current, water or gas, than actually passes through the same, shall be prima facie evidence of the knowledge of such person, firm or corporation engaged in selling or delivering such electric current, water or gas, of the existence thereof and shall bring such person, firm or corporation within the scope and meaning of this section, and subject to the operation of this section. Provided further, any employee, stockholder, or member of the board of directors who, with intent to defraud a customer, falsifies, or acquiesces in the falsifying, of any record which results in billing in excess of the amount lawfully due and owing, shall be guilty of a misdemeanor and shall be fined not more than Five Hundred Dollars ($500.00) or sentenced to serve not more than six (6) months in jail, or both.

Provided further, this section shall not relieve any person, firm or corporation from any other liabilities now imposed by law.

The governing authorities of any municipality are authorized to prosecute any violation of this section which is committed upon meters owned or operated by a utility which is owned or operated by a municipality. In addition, the governing authorities of a municipality are authorized to prosecute within the municipality when any violation of this section is committed upon such meters that lie outside the municipal boundaries of the municipality.

HISTORY: Codes, 1930, § 1025; 1942, § 2257; Laws, 1922, ch. 271; Laws, 1932, ch. 268; Laws, 1981, ch. 541, § 3; Laws, 1984, ch. 338; Laws, 1992, ch. 385, § 1; Laws, 2009, ch. 397, § 1; Laws, 2013, ch. 435, § 1, eff from and after July 1, 2013.

Cross References — Authorization for governing authorities of municipality to prosecute persons tampering with electricity, gas, or water meters, see § 21-27-9.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

OPINIONS OF THE ATTORNEY GENERAL

Theft of electrical power from a municipal power company must be prosecuted in the court having jurisdiction over the location where the theft occurred, either in the appropriate Justice Court or in the Municipal Court having jurisdiction where the theft occurred. A Justice Court may award restitution up to $5,000, and a municipal court may order full restitution. Barton, March 2, 2007, A.G. Op. #07-00099, 2007 Miss. AG LEXIS 81.

RESEARCH REFERENCES

Am. Jur.

50 Am. Jur. 2d, Larceny §§ 60, 62.

CJS.

52B C.J.S., Larceny §§ 20, 21, 27.

§ 97-25-4. Railroads; offenses committed on railroad right-of-way.

(1) Except as otherwise provided in subsection (2) of this section, it shall be unlawful for any person to do any of the following acts without first having obtained written permission from the owner or operator of the railroad line:

(a) To attempt to board or disembark from a moving freight train;

(b) To damage or deface, or attempt to damage or deface, railroad track, signals, switches, buildings, structures, bridges, rights-of-way, wire lines, motive power, rolling stock or other property; or

(c) To dump, or cause to be dumped, upon railroad right-of-way any paper, ashes, sweepings, household wastes, glass, metal, tires, mattresses, furniture, dangerous substances or any other refuse or substance of any kind.

(2) Subsection (1) of this section shall not apply to:

(a) Railroad employees engaged in the performance of their duties; or

(b) Representatives of utilities or other agencies with easements across or along the railroad in the performance of their duties.

(3) Any person who violates the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof, be punished by imprisonment for not more than thirty (30) days or by a fine of not less than One Hundred Dollars ($100.00) but not more than Four Hundred Dollars ($400.00), or both, and may be required to pay any clean-up costs. In addition, any person who is

convicted for a violation of subsection (1)(b) or subsection (1)(c) of this section shall be ordered by the court to make restitution to the owners or operators of the railroad line or property in an amount determined by the court to compensate for all damages caused by such person and all costs related to cleanup necessitated as a result of such person's unlawful conduct.

(4) The penalties provided for in this section shall be in addition to any other penalties provided by law for the same or similar acts.

(5) As used in this section the term "right-of-way" means track, roadbed and adjacent property which would be readily recognizable to a reasonable person as railroad property.

HISTORY: Laws, 2001, ch. 446, § 1; Laws, 2007, ch. 572, § 3, eff from and after July 1, 2007.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in (3). The words "of Section 1" were deleted and replaced, so that the reference now reads as "subsection (1)(b) or subsection (1)(c) of this section." The Joint Committee ratified the correction at its May 16, 2002 meeting.

§ 97-25-5. Railroads; destroying crossing-sign, gate or warning-signals.

If any person shall willfully obliterate, injure or destroy any railroad-gate, warning-signals, cattle-gap or any board or sign erected or maintained by a railroad company in pursuance of law, he shall be fined not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00), or be imprisoned in the county jail not exceeding three (3) months, or both. In addition, any person who is convicted for a violation of this section shall be ordered by the court to make restitution to the owners or operators of the railroad line or property in an amount determined by the court to compensate for all damages caused by such person and all costs related to cleanup necessitated as a result of such person's unlawful conduct.

HISTORY: Codes, 1857, ch. 35, art. 39; 1871, § 2425; 1880, § 1051; 1892, § 1268; 1906, § 1343; Hemingway's 1917, § 1077; 1930, § 1107; 1942, § 2343; Laws, 1981, ch. 541, § 4; Laws, 2007, ch. 572, § 4, eff from and after July 1, 2007.

Cross References — Requirement of railroad crossing-signs, see § 77-9-247.

§ 97-25-7. Railroads; driving vehicle or livestock on track.

Any person who shall ride, drive any vehicle, drive any cattle, horses, mules or other livestock along or on any railroad track open and operated for traffic, unless by permission of the owners of said track, or their agent, shall be guilty of a misdemeanor and be fined not less than twenty-five dollars ($25.00) nor more than two hundred fifty dollars ($250.00). The penalty hereof shall not be incurred by operating a street railroad or by crossing a track.

HISTORY: Codes, 1892, § 1267; 1906, § 1342; Hemingway's 1917, § 1076; 1930, § 1106; 1942, § 2342; Laws, 1981, ch. 541, § 5, eff from and after July 1, 1981.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 97-25-9. Railroads; embezzlement of tickets.

If any officer, agent, clerk, or employee of any railroad company, shall fraudulently embezzle, dispose of, or convert to his own use any passenger railroad ticket or tickets, whether such tickets be fully prepared for use or not, or who shall use such tickets which have been once used, and which have come to his hands or charge by virtue of his office or employment, he shall be punished by imprisonment in the penitentiary not exceeding five years, or by fine not exceeding one thousand dollars.

HISTORY: Codes, 1892, § 1067; 1906, § 1145; Hemingway's 1917, § 873; 1930, § 898; 1942, § 2124.

Cross References — Forgery and counterfeiting of railroad tickets, see §§ 97-21-39 through 97-21-43.
Embezzlement by agents, employees, etc., generally, see § 97-23-19.
Description of property in indictment for embezzlement, see § 99-7-31.

RESEARCH REFERENCES

Am. Jur.
26 Am. Jur. 2d, Embezzlement §§ 1 et seq.

§ 97-25-11. Railroads; stealing tickets.

If any person shall steal any passenger railroad-ticket or tickets belonging to or issued by any railroad company, the amount of money which in the usual course of business it would have required to have purchased it or them from such railroad company, shall be deemed the value of the stolen ticket or tickets.

HISTORY: Codes, 1892, § 1177; 1906, § 1255; Hemingway's 1917, § 985; 1930, § 1013; 1942, § 2245.

Cross References — Robbery of railroad tickets, see § 97-3-83.
Grand larceny, see § 97-17-41.
Petit larceny, see § 97-17-43.
Forgery and counterfeiting of railroad tickets, see §§ 97-21-39 through 97-21-43.
Embezzlement of railroad tickets, see § 97-25-9.

RESEARCH REFERENCES

Am. Jur.
50 Am. Jur. 2d, Larceny §§ 54, 55.

CJS.
52B C.J.S., Larceny §§ 12, 79, 80, 82.

§ 97-25-13. Railroads; intoxication of engineer or conductor.

If any person, while on duty in charge of a locomotive-engine running or standing upon any railroad, or if any conductor in charge of a car or train on any railroad, shall be intoxicated, he shall, on conviction, be imprisoned in the penitentiary not less than one year nor more than fifteen years.

HISTORY: Codes, 1880, § 1063; 1892, § 1275; 1906, § 1350; Hemingway's 1917, § 1084; 1930, § 1114; 1942, § 2350.

§ 97-25-15. Railroads; jumping on or off cars in motion.

If any person, other than passengers or employees engaged in operating the railroad, shall wilfully climb, jump or step upon, or in any way attach himself to, or shall jump off a locomotive, tender or car while in motion on a railroad track or siding, he shall, upon conviction, be fined not less than fifty dollars ($50.00) nor more than two hundred dollars ($200.00), or be imprisoned in the county jail not less than five (5) days nor more than twenty-five (25) days, or both.

HISTORY: Codes, 1892, § 1272; 1906, § 1347; Hemingway's 1917, § 1081; 1930, § 1111; 1942, § 2347; Laws, 1981, ch. 541, § 6, eff from and after July 1, 1981.

JUDICIAL DECISIONS

1. In general.

Railroad special agent's permission to man to board freight train imposed no greater duty upon railroad than not to wantonly or wilfully injure man, since special agent had no authority to give such permission. Gulf & S. I. R. Co. v. Still, 169 Miss. 69, 152 So. 824, 1934 Miss. LEXIS 25 (Miss. 1934).

Trespasser injured in boarding freight train, when train suddenly jerked after he indicated to fireman that he intended to board train, held not entitled to recover for wilful or gross negligence, where it did not appear that engineer was informed of trespasser's peril. Gulf & S. I. R. Co. v. Still, 169 Miss. 69, 152 So. 824, 1934 Miss. LEXIS 25 (Miss. 1934).

Affidavit under this section [Code 1942, § 2347] averring merely that a person jumped off a moving railroad train charges no offense and arrest and imprisonment of a passenger under such an affidavit subjects the party to an action for false imprisonment. Alabama & V. R. Co. v. Kuhn, 78 Miss. 114, 28 So. 797, 1900 Miss. LEXIS 78 (Miss. 1900).

§ 97-25-17. Railroads; leaving switch open or improperly placed.

If any brakeman, switchman, or other person in charge of any switch, shall wilfully or carelessly leave the same open or improperly placed, whereby any person shall be killed or injured, he shall, on conviction, be imprisoned in the penitentiary not more than fifteen years.

HISTORY: Codes, 1880, § 1061; 1892, § 1279; 1906, § 1354; Hemingway's 1917, § 1088; 1930, § 1118; 1942, § 2354.

§ 97-25-19. Railroads; locomotive to be stopped before entering or crossing track of another company.

If any person shall run, or cause to be run, a locomotive propelled by steam upon or across the track of any other railroad company without first coming to a full stop just before it comes upon or across such track, he shall, on conviction, be fined not less than twenty-five dollars nor more than one thousand dollars, or imprisoned in the county jail not more than one year, or both; and if, by reason of his coming upon or across such track, some person shall be killed or injured, he shall, upon conviction, be imprisoned in the penitentiary not more than fifteen years.

HISTORY: Codes, 1880, § 1060; 1892, § 1278; 1906, § 1353; Hemingway's 1917, § 1087; 1930, § 1117; 1942, § 2353.

Cross References — Highway crossings and bridges, see § 77-9-251.

JUDICIAL DECISIONS

1. In general.

An instruction that it was unlawful for a railroad train to be operated within a city at more than six miles an hour, etc., also embracing the hypothesis contemplated by this provision, was harmless error. Mobile & O. R. Co. v. Campbell, 114 Miss. 803, 75 So. 554, 1917 Miss. LEXIS 87 (Miss. 1917).

§ 97-25-21. Railroads; obstructing or injuring.

If any person shall wantonly or negligently obstruct or injure any railroad, on conviction, he shall be fined not less than five hundred dollars ($500.00) nor more than two thousand dollars ($2,000.00), or imprisoned not longer than twelve (12) months in the county jail, or both.

HISTORY: Codes, 1857, ch. 64, art. 163; 1871, § 2626; 1880, § 2873; 1892, § 1265; 1906, § 1340; Hemingway's 1917, § 1074; 1930, § 1104; 1942, § 2340; Laws, 1981, ch. 541, § 7, eff from and after July 1, 1981.

Cross References — Rights, powers, and privileges of railroad corporations, see §§ 77-9-141 et seq.

Conspiracy to impede or obstruct railroad, public utility or carrier, see § 97-25-43.

Obstruction or impeding of railroad, public utility or carrier by intimidation, force or violence, see § 97-25-45.

JUDICIAL DECISIONS

1. In general.

This section [Code 1942, § 2340] is not unconstitutional for not sufficiently defining the elements constituting the crime. State v. Lucas, 221 Miss. 538, 73 So. 2d 158, 1954 Miss. LEXIS 560 (Miss. 1954).

Where an indictment charged that the defendant unlawfully, wantonly and negligently obstructed a railroad by negligently and wantonly leaving his unattended automobile parked at a railroad crossing at a private road for automobiles, the indictment was sufficient in detail to inform the accused of the nature of the crime and the acts he is charged with having committed. State v. Lucas, 221 Miss. 538, 73 So. 2d 158, 1954 Miss. LEXIS 560 (Miss. 1954).

§ 97-25-23. Railroads; obstructing or injuring; derailing cars.

If any person shall wantonly or maliciously injure, or place any impediment or obstruction on any railroad, or do any other act by means of which any car or vehicle might be caused to diverge, or be derailed, or thrown from the track, such person, on conviction, shall be committed to the custody of the department of corrections for a term of not less than one (1) year nor more than ten (10) years, and the penalty provided in this section shall apply to any engineer, conductor, switchman, brakeman, train dispatcher or telegraph operator who shall wilfully or negligently cause the derailment or collision of a passenger train.

HISTORY: Codes, 1857, ch. 64, art. 164; 1871, § 2627; 1880, § 2874; 1892, § 1266; 1906, § 1341; Hemingway's 1917, § 1075; 1930, § 1105; 1942, § 2341; Laws, 1981, ch. 541, § 8, eff from and after July 1, 1981.

Cross References — Conspiracy to impede or obstruct railroad, public utility or carrier, see § 97-25-43.

Obstruction or impeding of railroad, public utility or carrier by intimidation, force or violence, see § 97-25-45.

JUDICIAL DECISIONS

1. In general.

Where two years and forty-two days elapsed from the date the offense of placing an obstruction on a railroad track whereby a train or part thereof might be derailed was committed to the date the prosecution was begun, and the state did not prove nor attempt to prove, nor was there any evidence on which it could be said that defendant was absent from the state any single day except at the time of his arrest, conviction must be reversed and remanded. McCullar v. State, 183 So. 487 (Miss. 1938).

§ 97-25-25. Railroads; seizing and running locomotive.

If any person shall unlawfully seize upon any locomotive and run it away, or shall aid, abet or procure the doing of the same, he shall, upon conviction, be fined not less than five hundred dollars ($500.00) nor more than one thousand dollars ($1,000.00), or imprisoned in the county jail not exceeding six (6) months, or both.

HISTORY: Codes, 1892, § 1273; 1906, § 1348; Hemingway's 1917, § 1082; 1930, § 1112; 1942, § 2348; Laws, 1981, ch. 541, § 9, eff from and after July 1, 1981.

§ 97-25-27. Railroads; signaling or unlawfully interfering with train.

If any person, without authority and in the absence of apparent danger warranting such act, shall, out of a spirit of mischief, or with any purpose other than to prevent or give information of an accident, make, or cause to be made, any sign or signal to persons in charge of any locomotive, or railroad train or cars, or to any of such persons, or in sight of any of them, with intent to cause the stopping or starting of such locomotive, train, or cars; or if any person unlawfully interfere with the management or running of such locomotive, train, or cars on any railroad, the person so offending shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00), or shall be imprisoned in the county jail not exceeding three (3) months.

HISTORY: Codes, 1892, § 1280; 1906, § 1355; Hemingway's 1917, § 1089; 1930, § 1119; 1942, § 2355; Laws, 1981, ch. 541, § 10, eff from and after July 1, 1981.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 97-25-29. Railroads; stealing a ride.

Any person who shall ride on any engine, tender, car or train of any railroad company, without authority or permission of the proper officers or employees of the company, or of the persons in charge of such engine, tender, car or train, shall, on conviction, be fined not less than fifty dollars ($50.00) nor more than one hundred dollars ($100.00) or be imprisoned not more than thirty (30) days, or both.

HISTORY: Codes, 1892, § 1269; 1906, § 1344; Hemingway's 1917, § 1078; 1930, § 1108; 1942, § 2344; Laws, 1981, ch. 541, § 11, eff from and after July 1, 1981.

§ 97-25-31. Railroads; stealing animal killed or wounded by railroad.

Any person other than the owner thereof or the agents or employees of the railroad company who shall take and carry away, with intent to appropriate to his own use, any animal killed or wounded by the engine or cars of a railroad company, without obtaining the consent of such owner or the agent of such company, shall be guilty of larceny, and, upon conviction, be punished as provided by law for the larceny of such animal.

HISTORY: Codes, 1880, § 2910; 1892, § 1185; 1906, § 1263; Hemingway's 1917, § 993; 1930, § 1021; 1942, § 2253.

Cross References — Notice to mortgagee of loss of mortgaged cattle, see § 69-29-13.
Railroad's duty to construct and maintain stockgaps and cattle-guards, see § 77-9-253.
Grand larceny, see § 97-17-41.
Petit larceny, see § 97-17-43.
Report of animals killed by railroad, see § 97-25-33.

RESEARCH REFERENCES

Am. Jur.	**CJS.**
50 Am. Jur. 2d, Larceny §§ 22, 58.	52B C.J.S., Larceny §§ 12, 79, 80, 82.

§ 97-25-33. Railroads; not to destroy or bury animal killed by train until report made.

If any person or corporation operating a railroad shall bury or otherwise destroy, or cause to be buried or destroyed, the carcass of any domestic animal killed or injured by the running of a locomotive or cars, before a report in writing has been made to the nearest station agent, giving as near as can be the time of the killing or injury and a description of the animal, with marks and brands, and a fair estimate of its value if killed, and of the extent of damage if injured, said person or corporation shall, upon conviction, be fined not more than one hundred dollars. This section shall not apply in any case where the owner or possessor of the animal has been notified and had opportunity to examine the carcass of injured animal.

HISTORY: Codes, 1892, § 1277; 1906, § 1352; Hemingway's 1917, § 1086; 1930, § 1116; 1942, § 2352.

Cross References — Stealing animal killed or injured by railroad, see § 97-25-31.

§ 97-25-35. Railroads; stealing or interfering with communications or signaling equipment.

If any person shall maliciously remove, take, steal, change or in any manner interfere with any railroad transmission line, signaling device, microwave tower or any of the parts or attachments belonging to any communication or signaling device owned, leased or used by any railroad or transportation company, he shall, on conviction, be fined not more than Three Thousand Dollars ($3,000.00), or shall be imprisoned not more than five (5) years, or both. In addition, any person who is convicted for a violation of this section shall be ordered by the court to make restitution to the owners or operators of the railroad line or property in an amount determined by the court to compensate for all damages caused by such person and all costs related to cleanup necessitated as a result of such person's unlawful conduct.

HISTORY: Codes, 1942, § 2355.5; Laws, 1968, ch. 342, § 1; Laws, 1981, ch. 541, § 12; Laws, 2007, ch. 572, § 5, eff from and after July 1, 2007.

§ 97-25-37. Railroads; stopping or standing at crossing.

It shall be unlawful for any locomotive or train of cars to be stopped or left standing on any railroad crossing, unless done under regulations adopted by those having the right to control such matter. Any person violating this section shall, on conviction be fined not less than one hundred dollars, nor more than one thousand dollars, or be imprisoned in the county jail for one year, or both; and if, in consequence of such violation, any person shall be killed or injured, the guilty party shall be imprisoned in the penitentiary not exceeding fifteen years.

HISTORY: Codes, 1871, § 2423; 1880, § 1062; 1892, § 1274; 1906, § 1349; Hemingway's 1917, § 1083; 1930, § 1113; 1942, § 2349.

Cross References — Prohibition against railroad obstructing highways, see § 77-9-235.

Criminal responsibility of crew complying with orders of employer for obstruction of highways and streets, see § 77-9-236.

§ 97-25-39. Railroads; uncoupling locomotives and cars by persons not employed by railroad.

If any person, not being employed on any railroad, shall wilfully and maliciously uncouple or detach the locomotive or tender or any of the cars of any railroad train, or shall in any way aid, abet or procure the doing of the same, such person shall be punished by a fine of not less than two hundred fifty dollars ($250.00) nor more than one thousand dollars ($1,000.00), or imprisonment in the county jail not exceeding six (6) months, or both.

HISTORY: Codes 1892, § 1271; 1906, § 1346; Hemingway's 1917, § 1080; 1930, § 1110; 1942, § 2346; Laws, 1981, ch. 541, § 13, eff from and after July 1, 1981.

§ 97-25-41. Railroads; wilfully shooting from or on moving train.

If any person shall wilfully shoot any firearms on or from any moving train, such person shall, on conviction, be fined not less than two hundred fifty dollars ($250.00) nor more than one thousand dollars ($1,000.00), or be imprisoned in the county jail not more than six (6) months, or both.

HISTORY: Codes, 1906, § 1357; Hemingway's 1917, § 1091; 1930, § 1121; 1942, § 2357; Laws, 1981, ch. 541, § 14, eff from and after July 1, 1981.

Cross References — Shooting or throwing at train, bus, depot, etc., see § 97-25-47.

§ 97-25-43. Railroads, public utilities, and carriers; conspiracy to impede.

If two (2) or more persons shall wilfully or maliciously combine or conspire together to obstruct or impede or hinder by any unlawful act or threat of violence, terror or intimidation the regular operation and conduct of the business of any railroad company, or any public service corporation, or any public utility, or any person or corporation carrying passengers or property for hire, such persons, and each of them, shall, on conviction, be punished by a fine of not less than one thousand dollars ($1,000.00) and not exceeding three thousand dollars ($3,000.00), or imprisonment in the county jail for not less than ninety (90) days nor more than one (1) year, or by both such fine and imprisonment.

This section shall not apply to persons who merely quit the employment of a railroad company, whether by concert of action or otherwise.

HISTORY: Codes, 1892, § 1270; 1906, § 1345; Hemingway's 1917, § 1079; 1930, § 1109; 1942, §§ 2345, 2345-01; Laws, 1947, 2nd Ex. ch. 5, § 1; Laws, 1981, ch. 541, § 15, eff from and after July 1, 1981.

Cross References — Conspiracy, generally, see § 97-1-1.

Obstructing or injuring railroad, see §§ 97-25-21, 97-25-23.
Obstruction or impeding of railroad, public utility or carrier by intimidation, force or violence, see § 97-25-45.

§ 97-25-45. Railroads, public utilities, and carriers; obstructing or impeding by intimidation, force or violence.

If any person shall unlawfully obstruct or impede by any act of force or violence, or by any means of intimidation, the regular operation and conduct of the business of any railroad company or any public service corporation, or person carrying passengers or property, or any public utility, or shall impede, hinder, or obstruct, by force or violence, the regular running of any locomotive-engine, freight or passenger train of any railroad, or any vehicle used in the transportation of persons or property on the public highways, or the operation of any public utility, such person shall be guilty of a felony and, upon conviction, shall be committed to the custody of the department of corrections for a term of not less than one (1) year nor exceeding five (5) years.

HISTORY: Codes, 1942, § 2345-02; Laws, 1947, 2nd Ex. ch. 5, § 2; Laws, 1981, ch. 541, § 16, eff from and after July 1, 1981.

Cross References — Obstructing or injuring railroad, see §§ 97-25-21, 97-25-23.
Conspiracy to impede or obstruct railroad, public utility or carrier, see § 97-25-43.

§ 97-25-47. Railroad trains, buses, trucks, motor vehicles, depots, stations, and other transportation facilities; wilfully shooting or throwing at.

If any person or persons shall wilfully shoot any firearms or hurl any missile at, or into, any train, bus, truck, motor vehicle, depot, station, or any other transportation facility, such person shall, upon conviction, be punished by a fine of not less than one hundred dollars ($100.00) nor more than two hundred fifty dollars ($250.00), or be committed to the custody of the department of corrections not less than one (1) year nor more than five (5) years, or by both such fine and imprisonment.

HISTORY: Codes, 1906, § 1356; Hemingway's 1917, § 1090; 1930, § 1120; 1942, § 2356; Laws, 1947, 2nd Ex. ch. 4; Laws, 1981, ch. 541, § 17, eff from and after July 1, 1981.

Cross References — Shooting on or from moving train, see § 97-25-41.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Double jeopardy.
3. Guilty pleas.
4. Evidence.

1. In general.

Throwing missile into coach of moving train, while standing on platform of coach, violates this section [Code 1942, § 2356]. State v. Ray, 87 Miss. 183, 39 So. 521, 1905 Miss. LEXIS 120 (Miss. 1905).

2. Double jeopardy.

Defendant's prosecutions for both shooting into a vehicle under Miss. Code Ann. § 97-25-47 and murder under Miss. Code Ann. § 97-3-19(1)(a), did not subject him to double jeopardy since the crimes charged required additional facts separate from each other; murder, unlike shooting into a vehicle, required the deliberate killing of an individual and did not require defendant to have shot into a vehicle, while shooting into a vehicle required only that defendant willfully shot into or at a vehicle, Further, the facts were such that it was not clear whether defendant shot into the vehicle when he killed the victim, as there was testimony to the effect that the victim may have had all or part of his head outside the vehicle when he was shot; in essence, the facts were such that defendant could have been found guilty of murder and of shooting into a vehicle without any risk of exposure to double jeopardy. Peacock v. State, 970 So. 2d 197, 2007 Miss. App. LEXIS 763 (Miss. Ct. App. 2007).

Defendant's claim of double jeopardy, pursuant to the Fifth Amendment, was without merit where application of the Blockburger test revealed that elements of each of the crimes of shooting into a vehicle, Miss. Code Ann. § 97-25-47, and aggravated assault, Miss. Code Ann. § 97-3-7(2) were not contained in the other. Graves v. State, 969 So. 2d 845, 2007 Miss. LEXIS 676 (Miss. 2007).

3. Guilty pleas.

In withdrawing defendant's guilty plea for shooting into a vehicle under Miss. Code Ann. § 97-25-47, the trial court found that the evidence offered for defendant's guilt at the plea colloquy was inconsistent with the facts charged in the indictment. The trial court stated that additional evidence should have been elicited to make the proof offered conform with the indictment; since the evidence was only that defendant shot at a vehicle and not into a vehicle, the trial court properly set aside the guilty plea. Peacock v. State, 970 So. 2d 197, 2007 Miss. App. LEXIS 763 (Miss. Ct. App. 2007).

4. Evidence.

In a case where defendant was convicted of aiding and abetting a shooting into a vehicle, the trial court did not err in denying defendant's motion for a judgment notwithstanding the verdict as the evidence was sufficient to support his conviction because he instructed his passenger to get out of his vehicle when the disagreement between defendant and the victim escalated; defendant told the passenger to show the victim that they meant business and told him to handle it; and, in response, the passenger shot into the victim's truck after the victim dove into the driver's seat; thus, any juror could have made a reasonable inference that defendant incited, encouraged, or assisted the passenger to shoot into the victim's truck. Crowell v. State, 193 So. 3d 706, 2016 Miss. App. LEXIS 383 (Miss. Ct. App. 2016).

§ 97-25-49. Wrongful access to telecommunications messages by cellular telephone; inadmissibility of information obtained in violation of this section.

(1) A person who commits either of the following offenses shall be punished by a fine of not more than One Thousand Dollars ($1,000.00), or by imprisonment in the county jail not exceeding six (6) months, or both:

(a) Wrongfully obtains, or attempts to obtain, any knowledge of a private telecommunications message by gaining access to the origination, transmission, emission or reception of signs, signals, data, writings, images and sounds or intelligence of any nature by cellular telephone, when such person is not the lawfully intended recipient of the message or is not authorized to have access to such message, or by connivance with a clerk, operator, messenger or other employee of a telecommunications company; or

(b) Being such clerk, operator, messenger or other employee, uses, or suffers to be used, or willfully divulges to anyone but the person for whom it was intended, the contents of a cellular phone message.

(c) The provisions of this subsection shall not apply to the use of a telephone monitoring device by either a law enforcement agency acting pursuant to a valid court order or to a corporation or other business entity engaged in marketing research or telephone solicitation conversations by an employee of the corporation or other business entity when the monitoring is used for the purpose of service quality control and the monitoring is used with the consent of at least one (1) person who is a party to the conversation.

(d) The provisions of this subsection shall not apply to an employee of a cellular telephone company who discloses or uses an intercepted communication in the normal course of business as a necessary incident to providing service or to the protection of the rights or property of the employer or who provides assistance to an investigative or law enforcement officer acting under a valid court order.

(2) Any information obtained in violation of this section shall not be admissible in any civil proceeding unless the information was obtained by the lawful owner of the device that obtained the information.

HISTORY: Codes, 1892, § 1301; 1906, § 1375; Hemingway's 1917, § 1115; 1930, § 1145; 1942, § 2382; Laws, 1999, ch. 514, § 1, eff from and after July 1, 1999.

Cross References — Penalty for neglect in transmittal and delivery of messages, see §§ 77-9-703 et seq.

JUDICIAL DECISIONS

1. In general.

An action for damages against a telegraph company for the act of its agent in divulging the contents of a message is not within the statute [Code 1942, § 2382]. Cock v. Western Union Tel. Co., 84 Miss. 380, 36 So. 392, 1904 Miss. LEXIS 47 (Miss. 1904).

RESEARCH REFERENCES

Am. Jur.

74 Am. Jur. 2d, Telecommunications § 57.

CJS.

86 C.J.S., Telecommunications § 131.

§ 97-25-51. Telegraphs and telephones; governmental messages.

If any telegraph company, or an officer, agent, operator, or employee of any such company or association, shall refuse or wilfully omit to transmit a dispatch tendered by an officer of this state, or of the United States, which by law is required to be given immediate dispatch, for the price of ordinary communications of the same length, or shall designedly alter or falsify the same for any purpose whatever, such company or such officer, agent, operator, or employee, shall, on conviction, be fined not exceeding two thousand dollars, or imprisoned in the county jail not exceeding one year, or both.

HISTORY: Codes 1892, § 1302; 1906, § 1376; Hemingway's 1917, § 1116; 1930, § 1146; 1942, § 2383.

Cross References — Penalty for neglect in transmittal and delivery of messages, see §§ 77-9-703 et seq.

RESEARCH REFERENCES

Am. Jur.
74 Am. Jur. 2d, Telecommunications §§ 68 et seq.

CJS.
86 C.J.S., Telecommunications §§ 129 et seq.

§ 97-25-53. Telegraphs and telephones; injuring or destroying lines; interrupting communications; stealing or destroying fixtures.

(1) Any person who shall intentionally obstruct, injure, break or destroy, or in any manner interrupt any telegraph or telephone line, or communication thereon between any two (2) points, by or through which the said lines may pass, or who shall injure or destroy any of the posts, wires, insulators, or fixtures, or things belonging to such telegraph or telephone lines, such person shall, on conviction, be fined not less than two hundred fifty dollars ($250.00), nor more than five hundred dollars ($500.00), or imprisoned in the county jail not exceeding six (6) months, or both such fine and imprisonment.

(2) Every person who shall be convicted of taking and carrying away, feloniously, such property as listed in subsection (1) of this section, of the value of one hundred dollars ($100.00) or more, shall be guilty of grand larceny, and shall be imprisoned in the penitentiary for a term not exceeding five (5) years, or shall be fined not more than one thousand dollars ($1,000.00), or both.

(3) If any person shall feloniously take, steal and carry away any such property as listed in subsection (1) of this section, under the value of one hundred dollars ($100.00), he shall be guilty of petit larceny and shall be punished by imprisonment in the county jail not exceeding three (3) months, or by fine not exceeding one hundred dollars ($100.00), or both.

HISTORY: Codes, 1857, ch. 64, art. 235; 1871, § 2702; 1880, § 2954; 1892, § 1300; 1906, § 1374; Hemingway's 1917, § 1114; 1930, § 1144; 1942, § 2381; Laws, 1902, ch. 100; Laws, 1981, ch. 541, § 18, eff from and after July 1, 1981.

Cross References — Telegraph and telephone lines, see §§ 77-9-711 et seq.

JUDICIAL DECISIONS

1. In general.

In a case in which a utility installer appealed a circuit court's entry of summary judgment in favor of a telecommunications company and a company employee in regards to his claim of malicious prosecution, since the charge that he had violated Miss. Code Ann. § 97-25-53 was dismissed for lack of jurisdiction, that dismissal did not provide a basis for the installer's malicious prosecution claim. The dismissal of the case for lack of jurisdiction was not a termination in the installer's favor. Bearden v. BellSouth Telcoms., Inc., 29 So. 3d 761, 2010 Miss. LEXIS 128 (Miss. 2010).

RESEARCH REFERENCES

ALR.

Validity, construction, and application of state criminal statute forbidding use of telephone to annoy or harass. 95 A.L.R.3d 44.

§ 97-25-54. Theft of telephone and other communication services prohibited; definitions; manufacture and possession of devices to facilitate theft prohibited; penalties.

(1) The following words and phrases shall have the meanings ascribed herein unless the context clearly requires otherwise:

(a) "Telecommunication device" means any type of instrument, device, machine, or equipment that is designed for or capable of transmitting or receiving telephonic, electronic or radio communications, or any part of such instrument, device, machine or equipment, or any computer circuit, computer chip, electronic mechanism or other component which is capable of facilitating the transmission or reception of telephonic, electronic or radio communications;

(b) "Telecommunication service" means any service provided for a charge or compensation to facilitate the origination, transmission, emission or reception of signs, signals, data, writings, images and sounds or intelligence of any nature by telephone, including cellular telephones, wire, radio, electromagnetic, photoelectronic or photo-optical system.

(c) "Telecommunication service provider" means an entity engaged in the creation, display, management, storage, processing, transmission or distribution for compensation of images, text, voice, video or data by wire or by wireless means, or entities engaged in the construction, design, development, manufacture, maintenance or distribution for compensation of devices, products, software or structures used in the above activities. The term does not include companies organized to do business as commercial broadcast radio stations, television stations or news organizations primarily serving in-state markets.

(d) "Unlawful telecommunication device" means any electronic serial number, mobile identification number, personal identification number or any telecommunication device that is capable or has been altered, modified, programmed or reprogrammed alone or in conjunction with another access device or other equipment so as to be capable of acquiring or facilitating the acquisition of a telecommunication service without the consent of the telecommunication service provider. The term includes without limitation phones altered to obtain service without the consent of the telecommunication service provider, tumbler phones, counterfeit or clone phones, tumbler microchips, counterfeit or clone microchips, scanning receivers of wireless telecommunication service of a telecommunication service provider and other instruments capable of disguising their identity or location or of gaining access to a communications system operated by a telecommunication service provider.

(2)(a) It shall be unlawful for any person to use a telecommunication device intending to avoid the payment of any lawful charge for service to the device.

(b) It shall be unlawful for any person to knowingly, willfully and with intent to defraud a person providing telephone or telegraph service to avoid or attempt to avoid or to aid, abet or cause another to avoid the lawful charge in whole or in part for telephone or telegraph service by any of the following means:

(i) By charging the service to an existing telephone number or credit card number without the authority of the subscriber thereto or the lawful holder thereof;

(ii) By charging the service to a nonexistent telephone number or credit card number, or to a number associated with telephone service which is suspended or terminated, or to a revoked, cancelled or expired credit card number, notice of the suspension, termination, revocation or cancellation of the telephone service or credit card having been given to the subscriber thereto or the holder thereof;

(iii) By use of a code, prearranged scheme, or other similar stratagem or device whereby the person, in effect, sends or receives information;

(iv) By rearranging, tampering with, or making connection with telephone or telegraph facilities or equipment, whether physically, electrically, acoustically, inductively, or otherwise, or by using telephone or telegraph service with knowledge or reason to believe that the rearrangement, tampering or connection existed at the time of the use;

(v) By using any other deception, false pretense, trick, scheme, device, conspiracy, or means, including the fraudulent use of false, altered, or stolen identification.

(c) The first offense under this subsection shall be a misdemeanor and shall be punishable by a fine not to exceed One Thousand Dollars ($1,000.00) or imprisonment not to exceed one (1) year, or both. A second or subsequent offense under this subsection shall be a felony and shall be punishable by a fine not to exceed Fifty Thousand Dollars ($50,000.00) or commitment to the custody of the State Department of Corrections not to exceed ten (10) years, or both.

(3)(a) It shall be unlawful for any person to make, possess, sell, give or otherwise transfer to another, or offer or advertise any instrument, apparatus, or device with intent to use it or with knowledge or reason to believe it is intended to be used to avoid any lawful telephone or telegraph toll charge or to conceal the existence or place of origin or destination of any telephone or telegraph message or to sell, give, or otherwise transfer to another or offer or advertise plans, instructions or any kit for making or assembling such an instrument, apparatus, or device with knowledge or reason to believe that the plans, instructions or kit may be used to make or assemble such an instrument, apparatus, or device.

(b) Any person who possesses a telecommunications device with intent to sell or offer to sell to another, intending to avoid the payment of any lawful charge for service to the device or who makes, distributes, possesses, uses or assembles an unlawful telecommunication device or modifies, alters, programs or reprograms a telecommunications device designed, adapted or which can be used for commission of a theft of telecommunication service or to acquire or facilitate the acquisition of telecommunication service without the consent of the telecommunication service provider or to conceal or to assist another to conceal from any telecommunication service provider or from any lawful authority the existence or place of origin or of destination of any communication is guilty of a misdemeanor and shall be punished by imprisonment not to exceed one (1) year, a fine to not exceed Ten Thousand Dollars ($10,000.00), or both. Any person who possesses ten (10) or more such unlawful telecommunication devices is guilty of a felony, and shall be punished by a fine not to exceed Fifty Thousand Dollars ($50,000.00), commitment to the custody of the State Department of Corrections not to exceed ten (10) years, or both.

(c) Any person who manufactures ten (10) or more telecommunications devices and intends to sell them to others intending to avoid the payment of any lawful charge for service to the device is guilty of a felony, and shall be punished by a fine not to exceed Fifty Thousand Dollars ($50,000.00), commitment to the custody of the State Department of Corrections not to exceed ten (10) years, or both.

(4) It shall be unlawful for any person to publish the number or code of an existing, canceled, revoked, expired, or nonexistent credit card, or the numbering or coding which is employed in the issuance of credit cards, with the intent that it be used or with knowledge or reason to believe that it will be used to avoid the payment of any lawful telephone or telegraph toll charge. For the purposes of this section, "publishes" means the communication of information to any one or more persons, either orally, in person or by telephone, radio or television, or electronic means, including without limitation a bulletin board system, or in a writing of any kind, including without limitation a letter or memorandum, circular or handbill, newspaper, magazine article, or book.

(5) It shall be unlawful for any person who is the holder of a calling card, credit card, calling code, or any other means or device for the legal use of telecommunications services and who receives anything of value for knowingly allowing another person to use the means or device in order to fraudulently obtain telecommunication services.

(6)(a) A person shall be guilty of theft of telecommunications services if, having control over the disposition of services of others to which he is not entitled, he knowingly diverts such services to his own benefit or to the benefit of another not entitled thereto. Theft of telecommunications services when the value of the services obtained or diverted is less than Fifty Dollars

($50.00) shall be a misdemeanor. Theft of telecommunications services when the value of the services obtained or diverted is Fifty Dollars ($50.00) or more shall be a felony and shall be punished by a fine not to exceed Ten Thousand Dollars ($10,000.00), or commitment to the custody of the State Department of Corrections for a period not to exceed ten (10) years, or both.

(b) Amounts involved in theft of services committed pursuant to one scheme or course of conduct, whether from the same person or several persons, may be aggregated in determining the gravity of the offense.

(7) The provisions of this section shall apply to any telecommunication service which either originates or terminates or both originates and terminates in this state or when the charges for service would have been billable, in normal course, by a person or entity providing telecommunication service in this state, but for the fact that the charge or service was avoided, or attempted to be avoided, by one or more means proscribed by this section.

(8) Except as otherwise provided herein, the first offense under this section shall be a misdemeanor and shall be punishable by a fine not to exceed One Thousand Dollars ($1,000.00) or imprisonment not to exceed one (1) year, or both. A second or subsequent offense under this section shall be a felony and shall be punishable by a fine not to exceed Fifty Thousand Dollars ($50,000.00) or commitment to the custody of the State Department of Corrections not to exceed ten (10) years, or both.

(9) Any person defrauded by any acts prohibited under this section shall be entitled to restitution for the entire amount of the charges avoided from any person or persons convicted under this section. The court may, in addition to any other sentence authorized by law, sentence a person convicted of violating this section to make restitution.

(10) A telecommunication service provider aggrieved by a violation of this section may, in a civil action in any court of competent jurisdiction, obtain appropriate relief, including preliminary and other equitable or declaratory relief, compensatory and punitive damages, reasonable investigation expenses, costs of court and attorney fees.

(11) Any instrument, apparatus, device, plans, instructions, kit, or written publication described in subsection (2) or (3) of this section may be seized under warrant or incident to a lawful arrest, and, upon the conviction of a person for a violation of this section, the instrument, apparatus, device, plans, instructions, or written publication may be destroyed as contraband as provided by law.

HISTORY: Laws, 1995, ch. 411, § 1, eff from and after July 1, 1995.

Cross References — Unlawful use of telephone number, credit number, or other credit devise to obtain property or services, see § 97-19-31.

Obtaining signature on instrument, money, personal property, or thing of value with intent to defraud, see § 97-19-39.

JUDICIAL DECISIONS

1. Evidence.

Although defendant used the victim's phone following her death–making and receiving some 60 calls while using the phone–the evidence was insufficient to support defendant's conviction of felony theft of telecommunication services because the State failed to present any evidence to establish that the value of the services obtained or diverted by defendant exceeded $50. Nevertheless, despite this failure of proof, the evidence was sufficient to support a conviction of the lesser offense of misdemenaor theft of telecommunications services. Bartolo v. State, 32 So. 3d 522, 2009 Miss. App. LEXIS 530 (Miss. Ct. App. 2009).

RESEARCH REFERENCES

Am. Jur.

50 Am. Jur. 2d, Larceny § 66.

74 Am. Jur. 2d, Telecommunications §§ 195, 196, 198-201.

CJS.

86 C.J.S., Telecommunications § 131.

§ 97-25-55. Aircraft piracy; boarding aircraft with dangerous or deadly weapon or instrument.

(1) The offense of aircraft piracy is defined as the seizure or exercise of control, by force or violence or threat of force or violence, of any aircraft within the airspace jurisdiction of the State of Mississippi. Any person convicted of the offense of aircraft piracy shall suffer death or imprisonment for life in the state penitentiary.

(2) The offense of assault with the intent to commit aircraft piracy is defined as an intimidation, threat, assault or battery toward any flight crew member or flight attendant (including any steward or stewardess) of such aircraft so as to interfere with the performance of duties by such member or attendant to perform his duties, with the intent to commit aircraft piracy as defined in subsection (1) of this section. Any person convicted of the offense of assault with intent to commit aircraft piracy shall serve a term not to exceed twenty (20) years or be fined a sum not to exceed ten thousand dollars ($10,000.00), or both.

Any person who, in the commission of such intimidation, threat, assault or battery with the intent to commit aircraft piracy, employs a dangerous or deadly weapon or other means capable of inflicting serious bodily injury shall serve a term not to exceed fifty (50) years or be fined a sum not to exceed twenty thousand dollars ($20,000.00), or both.

(3) Any person who boards an aircraft with a dangerous or deadly weapon or other means capable of inflicting serious bodily injury concealed upon his person or effects shall, upon conviction, serve a term not to exceed ten (10) years or be fined a sum not to exceed five thousand dollars ($5,000.00), or both. The prohibition of this subsection shall not apply to duly elected or appointed law enforcement officers or commercial security personnel who are in possession of weapons used within the course and scope of their employment; nor shall the prohibition apply to persons who are in possession of weapons or

means with the consent of the owner of such aircraft, or his agent, or the lessee or bailee of such aircraft.

(4) Anyone accused of violating subsection (1), (2) or (3) of this section shall be indicted and tried as provided by section 99-11-19.

HISTORY: Laws, 1974, ch. 576, § 2; Laws, 1977, ch. 458, § 9, eff from and after passage (approved April 13, 1977).

Cross References — Construction of the terms "capital case," "capital offense," "capital crime," and "capital murder," see § 1-3-4.

Separate sentencing proceeding to determine punishment in capital cases, see §§ 99-19-101 et seq.

RESEARCH REFERENCES

ALR.

Construction and application of § 902 (i-l) of Federal Aviation Act of 1958, as amended (49 USCS § 1472 (i-l), punishing aircraft piracy, interference with flight crew members, and certain other crimes aboard aircraft in flight. 10 A.L.R. Fed. 844.

Validity, under Federal Constitution, of preflight procedures used at airports to prevent hijacking of aircraft. 14 A.L.R. Fed. 286.

§ 97-25-57. Nuclear sabotage.

Any person who shall, by any act or omission, (a) wilfully and maliciously destroy or cause or attempt to cause damage or loss to a nuclear electrical generating facility or its components, including the electrical transmission lines or switching equipment used in direct connection with such a facility; or (b) feloniously take, steal and carry away or remove, alter or otherwise render unusable or unsafe the spent or unspent nuclear fuel used or stored in a nuclear electrical generating facility or nuclear storage facility shall be guilty of the crime of nuclear sabotage and, upon conviction, shall be punished by imprisonment for a period of not less than one (1) year nor more than five (5) years or by a fine of not more than ten thousand dollars ($10,000.00), or both.

This section shall be construed to cover acts and omissions of persons employed at such nuclear facilities, or persons otherwise rightfully upon the premises of such a facility, as well as all other persons; provided, however, that this section does not apply to acts or omissions carried out in accordance with official rules or directives relating to plant operation, or within the scope of responsibility of judgment delegated to persons employed at such nuclear facilities.

HISTORY: Laws, 1981, ch. 541, § 2, eff from and after July 1, 1981.

Cross References — Southern Interstate Nuclear Compact, see §§ 57-25-1 et seq.

§ 97-25-59. Impeding critical infrastructure; critical infrastructure trespass; penalties.

(1) **Definition of "critical infrastructure facility."** As used in this section, unless otherwise defined, "critical infrastructure facility" means:

(a) Any portion of an oil, gas, carbon dioxide, hazardous liquid or chemical pipeline or tank that is buried or enclosed by a fence or other physical barrier obviously designed to exclude intruders, or clearly marked with a sign or signs reasonably likely to come to the attention of intruders and indicating that entry is forbidden without authorization.

(b) One (1) of the following, if enclosed by a fence or other physical barrier obviously designed to exclude intruders, or if clearly marked with a sign or signs reasonably likely to come to the attention of intruders and indicating that entry is forbidden without authorization:

(i) A chemical or polymer manufacturing facility;

(ii) A telecommunications central switching office;

(iii) Wireless or other telecommunications infrastructure, including cell towers, communication towers, telephone poles and lines, cable headend or fiber-optic lines, other than those connecting to individual residences;

(iv) A transmission facility used by a federally licensed radio or television station, a governmental law enforcement or emergency services radio system, or electric utility;

(v) A petroleum refinery;

(vi) A liquid natural gas terminal or storage facility or compressed gas liquids plant or storage facility;

(vii) A natural gas compressor station;

(viii) A hydrocarbon processing plant, including a plant used in the processing, treatment or fractionation of oil, natural gas or natural gas liquids;

(ix) A natural gas distribution utility facility, including transmission facilities, pipeline interconnections, a city gate or town border station, metering stations, piping, a regulator station or a natural gas storage facility;

(x) A crude oil or refined products storage and distribution facility, including storage tanks, valve sites, pipeline interconnections, pump stations, metering stations, pipelines, or piping and truck loading or offloading facilities;

(xi) An above-ground or underground mining facility;

(xii) An electrical power generating facility, substation, switching station, communication facility, electrical control center or electric power lines and associated equipment infrastructure other than those connections to individual residences;

(xiii) A data center or supercomputing center that has an average constant draw of at least one (1) megawatt of electricity;

(xiv) A commercial airport, trucking terminal or other freight transportation facility, including a railroad switching yard, railroad facility or railroad track;

(xv) Any reservoir that supplies water for industrial or municipal supplies or irrigation for multiple users or an irrigation district; or

(xvi) A water intake structure, water treatment facility, wastewater treatment plant, pump station or water lines and associated equipment infrastructure other than those connections to individual residences.

(c) Any site where the construction or improvement of any facility or structure referenced in this section is occurring.

(2) **Impeding critical infrastructure.** (a) A person is guilty of impeding critical infrastructure if he or she intentionally or knowingly impedes the operations of a critical infrastructure facility in a manner not otherwise authorized by law.

(b) Impeding critical infrastructure is:

(i) A misdemeanor punishable by imprisonment for not more than six (6) months, a fine of not more than One Thousand Dollars ($1,000.00), or both, if the impediment causes damage or economic loss, the cost of which is less than One Thousand Dollars ($1,000.00);

(ii) A felony punishable by imprisonment for not more than seven (7) years, a fine of not more than Ten Thousand Dollars ($10,000.00), or both, if the impediment causes damage or economic loss, the cost of which is One Thousand Dollars ($1,000.00) or more.

(c) If a series of damage or loss results from a single continuing course of conduct, a single violation of this section may be charged and penalties imposed based on the aggregate cost of the damage or loss.

(d) An organization that aids, abets, solicits, compensates, hires, conspires with, commands or procures a person to commit the crime of impeding critical infrastructure is subject to a fine not to exceed One Hundred Thousand Dollars ($100,000.00), provided that the organization acted with the intent that the crime of impeding critical infrastructure be completed. A critical infrastructure facility may maintain a civil action against an organization for damages suffered as a consequence of a violation of this subsection, including damages for lost profits, whether or not any fine is imposed pursuant to this subsection.

(e) No person shall be liable for a violation of paragraph (a) or (b) of this subsection if the person:

(i) Owns or legally occupies the land upon which the critical infrastructure facility is located and is engaged in conduct that is not inconsistent with the operation of the critical infrastructure facility or that is authorized by an agreement;

(ii) Is lawfully engaged in any regulatory or legal process to which the critical infrastructure facility is subject; or

(iii) Is engaged in conduct arising out of a bona fide dispute about access to land.

(f) As used in this subsection, "impede" means:

(i) To block the operation of or prevent legal access to a critical infrastructure facility or the construction site of a permitted critical infrastructure facility; or

(ii) To damage, destroy, deface or tamper with the equipment of a critical infrastructure facility, whether completed or under construction.

(3) **Critical infrastructure trespass.** (a) A person is guilty of critical infrastructure trespass if he or she enters or remains on or in a critical

infrastructure facility or the construction site of a permitted critical infrastructure facility knowing he is not authorized to do so, or by means of false, forged, altered or counterfeit identification, or after having been notified to depart or not to trespass. For purposes of this subsection, notice is given by:

(i) Personal communication to the person by the owner or occupant, or his agent, or by a peace officer;

(ii) Posting of signs reasonably likely to come to the attention of intruders; or

(iii) The presence of fencing or other physical barrier designed to exclude intruders.

(b) Critical infrastructure trespass is a misdemeanor punishable by imprisonment for not more than one (1) year, a fine of not more than One Thousand Dollars ($1,000.00), or both.

(c) No person shall be liable for a violation of paragraph (a) of this subsection if that person:

(i) Owns or legally occupies the land upon which the facility is located and is engaged in conduct that is not inconsistent with the operation of the critical infrastructure facility or that is authorized by an agreement; or

(ii) Is lawfully engaged in any regulatory or legal process to which the critical infrastructure facility is subject.

(4) Nothing in this section shall be construed to prohibit:

(a) Public demonstrations or other expressions of free speech or free association to the extent such activity is protected under the United States or Mississippi Constitutions;

(b) Lawful commercial or recreational activities conducted in the open or unconfined areas around a pipeline, including, but not limited to, fishing, hunting, boating and birdwatching; or

(c) The lawful exercise of the right of ownership by an owner of real property, including use, enjoyment and disposition within the limits and under the conditions established by law.

HISTORY: Laws, 2020, ch. 356, § 1, eff from and after July 1, 2020.

CHAPTER 27.

CRIMES AFFECTING PUBLIC HEALTH

Sec.
97-27-1. Adulteration of food, drugs or candy.
97-27-3. Animals and fowl; diseased animals and fowl to be confined and segregated; burial.
97-27-5. Animals and fowl; selling, exposing or using animal with infectious disease.
97-27-7. Animals and fowl; glandered animals to be reported to board of supervisors; destruction or quarantine of diseased animals.
97-27-9. Beaches; bringing or leaving breakable containers or other injurious debris upon established beaches.
97-27-10. Definition of harmful substances.
97-27-11. Introduction of harmful biological substances into Mississippi prohibited; development, manufacture or possession of harmful biological substances prohibited except for authorized purposes; penalties.
97-27-12. Unlawful hoaxes intended to cause belief that exposure to certain harmful substances or devices has occurred; penalties; imposition of costs for individual or governmental response to unlawful hoax.
97-27-13. Contagious diseases; smallpox patient not to go abroad.
97-27-14. Contagious diseases; causing exposure to human immunodeficiency virus (HIV), hepatitis B or hepatitis C; crime of endangerment by bodily substance; violations and penalties.
97-27-15. Food sales; selling meat of animal not slaughtered, or unwholesome bread or drink.
97-27-17. Food sales; flour and other provisions.
97-27-19. Food sales; meat; sale of flesh of dead, diseased, and unclean animals; punishment.
97-27-21. Poisons; sale and giving away regulated.
97-27-23. Poisons; register to be kept; label.
97-27-25. Poisons; arsenic to be mixed with soot or indigo.
97-27-27. Poisons; arsenic or other deadly poison not to be used in embalming fluid.
97-27-29. Poisons; penalty for violation of certain sections.
97-27-31. Poisons; not to be sold to minors.
97-27-33. Poisons; inhalation of toxic vapors from model glue; unlawful glue sales to minors.
97-27-35. Repealed.

§ 97-27-1. Adulteration of food, drugs or candy.

If any person shall manufacture, sell or keep or offer or exhibit for sale any adulterated food, or drug, as defined by law; or if any person shall manufacture, sell, or keep or offer or exhibit for sale any candy, confection, or sweetmeat, in making which any preparation of lime or other deleterious substance is used, he shall, upon conviction, be fined not exceeding five hundred dollars, or be imprisoned in the county jail not more than six months, or both.

HISTORY: Codes, 1880, § 2744; 1892, § 952; 1906, § 1028; Hemingway's 1917, § 753; 1930, § 771; 1942, § 1997.

Cross References — Regulation of adulteration of food and drugs, see §§ 75-29-1 et seq.

Meat inspection to prevent adulteration and misbranding, see §§ 75-35-1 et seq.

RESEARCH REFERENCES

Am. Jur.

35A Am. Jur. 2d, Food §§ 74 et seq.

30 Am. Jur. Proof of Facts 2d 1, Foreign Substance in Food or Beverage.

31 Am. Jur. Proof of Facts 2d 81, Food Poisoning.

CJS.

2 C.J.S., Adulteration §§ 5 et seq.

36A C.J.S., Food §§ 24 et seq.

§ 97-27-3. Animals and fowl; diseased animals and fowl to be confined and segregated; burial.

Owners of cattle, horses, mules, sheep, jacks and jennets dying of charbon or glanders or anything of the fowl species dying of cholera, or hogs dying of any disease on their premises, and which fact may be known to them, are hereby required to quick lime and bury such two feet from surface of ground, or burn the same within twenty-four hours from the death thereof. Any person or persons having herds or flocks, infected with any of the diseases enumerated in this section shall be required to confine same, upon his or her premises, in a manner that will seclude them from contact with other non-infected herds or flocks. Any person or persons violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction, shall be fined in a sum not less than five dollars or more than twenty-five dollars for each offense.

HISTORY: Codes, Hemingway's 1917, §§ 761 et seq; 1930, § 779; 1942, § 2005; Laws, 1914, ch. 133.

Cross References — Compensation for destroyed diseased livestock, see § 69-15-113.

Penalty for driving or drifting livestock from area under tick quarantine, see § 69-15-325.

Penalty for violations of livestock sanitation regulations, see § 69-15-331.

Exposing, selling, or using animal with infectious disease, see § 97-27-5.

Sale of unwholesome bread, drink, or meat of diseased or unslaughtered animal, see § 97-27-15.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am. Jur.

4 Am. Jur. 2d, Animals §§ 16 et seq., 35 et seq.

CJS.

3B C.J.S., Animals §§ 99, 105-118, 120-122, 130.

§ 97-27-5. Animals and fowl; selling, exposing or using animal with infectious disease.

If any person shall knowingly sell or offer for sale, or use or expose, or shall cause or procure to be sold or offered for sale, or used or exposed, any horse or other animal having the disease known as glanders or farcy, or any other like contagious or infectious disease, he shall be guilty of a misdemeanor, and, on conviction, shall be fined not less than twenty-five dollars nor more than two hundred dollars, or imprisoned in the county jail not exceeding four months; or both.

HISTORY: Codes, 1880, § 809; 1892, § 1010; 1906, § 1087; Hemingway's 1917, § 813; 1930, § 836; 1942, § 2062.

Cross References — Authority of state livestock sanitary board, see § 69-15-13.

Penalty for driving or drifting livestock from area under tick quarantine, see § 69-15-325.

Penalty for violations of livestock sanitation regulations, see § 69-15-331.

Care of infected animals and disposition of dead bodies, see § 97-27-3.

Care and disposition of glandered animals, see § 97-27-7.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

ALR.

Extent of liability of seller of livestock infected with communicable disease. 87 A.L.R.2d 1317.

Extent of liability of seller of livestock infected with communicable disease. 14 A.L.R.4th 1096.

Am. Jur.

39 Am. Jur. Trials, Fraud in the Sale of a Show Horse, §§ 1 et seq.

§ 97-27-7. Animals and fowl; glandered animals to be reported to board of supervisors; destruction or quarantine of diseased animals.

If any person, being the owner or having the charge of any animal diseased with the glanders or farcy, shall not deprive the animal of life or closely confine it remote from all other animals liable to contract the disease, he shall be guilty of a misdemeanor and, on conviction, shall be punished as provided in Section 97-41-13.

Whenever a case of glanders or farcy is reported to the president of the board of supervisors, he may employ a competent veterinary surgeon, if necessary, at the expense of the county. If such veterinary surgeon declare the animal or animals affected with the glanders or farcy the sheriff shall immediately kill the animal or animals, for which service he shall be allowed not more than two dollars for each animal destroyed, to be paid out of the county treasury. And the said board of supervisors are hereby authorized and empowered, in the discretion of said board, to allow to the owner of said animal or animals, to be paid out of the county treasury, such sum therefor as the board may deem proper. If any owner of stock, having good reason to suspect that his stock is diseased shall fail to report to the president of the board, or if any official named in this section shall fail to perform the duties herein imposed, such offender shall, on conviction, be fined not less than twenty-five dollars or more than two hundred dollars, or shall be imprisoned in the county jail for a term not exceeding two months or both. The board of supervisors when any animal shall have been exposed to glanders or farcy and not actually infected, may order all such animals to be quarantined until such time as the danger of contagion shall have passed, and the place where such animals are kept shall also be quarantined.

HISTORY: Codes, 1880, § 810; 1892, § 1019; 1906, § 1096; Hemingway's 1917, § 822; 1930, § 846; 1942, § 2072; Laws, 1914, ch. 136.

Cross References — Authority of state livestock sanitary board, see § 69-15-13.
Compensation for destroyed diseased livestock, see § 69-15-113.
Penalty for violations of livestock sanitation regulations, see § 69-15-331.
Care of infected animals and disposition of dead bodies, see § 97-27-3.
Exposing, selling, or using animal with infectious disease, see § 97-27-5.
Cruelty to animals, see §§ 97-41-1 et seq.
Penalty for violation of this section, see § 97-41-13.
Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

ALR.

Personal liability of public officer for killing or injuring animal while carrying out statutory duties with respect to it. 2 A.L.R.3d 822.

Am. Jur.

4 Am. Jur. 2d, Animals §§ 16 et seq., 35 et seq.

CJS.

3B C.J.S., Animals §§ 123 et seq.

§ 97-27-9. Beaches; bringing or leaving breakable containers or other injurious debris upon established beaches.

(1) Whoever shall bring, put, throw, dump or leave on any established beach any cans, bottles, jars, glassware or broken glass, or any debris of any kind that might cause injury to barefoot persons using the beach, shall be guilty of a misdemeanor and punished as provided for in subsection (3) of this section.

(2) For the purposes of this section, "established beach" shall include any sand beach, natural or man-made, along any natural coastline or inland lake within the State of Mississippi designated or used for public recreational purposes.

(3) Any person who shall be found guilty of the violation of this section shall, upon conviction, be fined in a sum not exceeding twenty dollars ($20.00) for each offense.

HISTORY: Codes, 1942, § 2018.7; Laws, 1964, ch. 342, §§ 1-3, eff from and after passage (approved May 15, 1964).

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 97-27-10. Definition of harmful substances.

As used in Sections 97-27-10 through 97-27-12:

(a) "Harmful biological substance" means a bacteria, virus or other microorganism or a toxic substance derived from or produced by an organism that can be used to cause death, injury or disease in humans, animals or plants.

(b) "Harmful biological device" means a device designed or intended to release a harmful biological substance.

(c) "Harmful chemical substance" means a solid, liquid, or gas that through its chemical or physical properties, along or in combination with one or more other chemical substances, can be used to cause death, injury or disease in humans, animals or plants.

(d) "Harmful chemical device" means a device that is designed or intended to release a harmful chemical substance.

(e) "Harmful radioactive material" means material that is radioactive and that can be used to cause death, injury or disease in humans, animals or growing plants by its radioactivity.

(f) "Harmful radioactive device" means a device that is designed or intended to release a harmful radioactive material.

HISTORY: Laws, 2002, ch. 310, § 1, eff from and after passage (approved Mar. 14, 2002).

§ 97-27-11. Introduction of harmful biological substances into Mississippi prohibited; development, manufacture or possession of harmful biological substances prohibited except for authorized purposes; penalties.

(1) It shall be unlawful for any person to willfully and knowingly import, bring or send into this state a harmful biological substance including smallpox, anthrax or any other contagious or infectious disease, with the design to unlawfully spread the same or assist in spreading the same with intent to cause harm to human, animal or plant life and it shall likewise be unlawful for any person to develop, manufacture or possess such harmful biological substances, except for purposes authorized by law.

(2) A person convicted of subsection (1) shall be guilty of a felony and, upon conviction, shall be fined not more than One Hundred Thousand Dollars ($100,000.00), and be imprisoned not more than twenty (20) years in the State Penitentiary, or both.

HISTORY: Codes, 1857, ch. 64, art. 64; 1871, § 2719; 1880, § 2760; 1892, § 1008; 1906, § 1085; Hemingway's 1917, § 811; 1930, § 834; 1942, § 2060; Laws, 2002, ch. 310, § 2, eff from and after passage (approved Mar. 14, 2002).

Cross References — Quarantine for venereal disease, see § 41-23-27.

JUDICIAL DECISIONS

1. In general.

Venereal disease is not within the scope of this section [Code 1942, § 2060]. Austin v. State, 100 Miss. 189, 56 So. 345, 1911 Miss. LEXIS 24 (Miss. 1911).

§ 97-27-12. Unlawful hoaxes intended to cause belief that exposure to certain harmful substances or devices has occurred; penalties; imposition of costs for individual or governmental response to unlawful hoax.

(1) It shall be unlawful for any person to commit an act intended to cause another person or persons to falsely believe that said person or persons have been exposed to a harmful biological substance, harmful biological device, harmful chemical substance, harmful chemical device, harmful radioactive material or harmful radioactive device.

(2) Any person convicted of subsection (1) of this section shall be guilty of a felony, and, upon conviction, shall be punished by imprisonment in the State Penitentiary for not more than five (5) years or shall be fined not more than Ten Thousand Dollars ($10,000.00), or both.

(3) In addition to any such imprisonment and/or fine which may be imposed upon a violation of subsection (1) of this section, the court shall also order that any person convicted for such violation shall reimburse any individual or governmental agency for the expenses incurred as a result of the violation.

HISTORY: Laws, 2002, ch. 310, § 3, eff from and after passage (approved Mar. 14, 2002).

§ 97-27-13. Contagious diseases; smallpox patient not to go abroad.

A person having recently had the smallpox shall not, until after having obtained a certificate of the attending physician, and of his person qualified to give such certificate, of his recovery, or other being perfectly clean in his person and clothes, remove from the place where he shall have had the smallpox, to go abroad in the company of other persons who have not had the disease, or go into any public road or highway where travelers usually pass, without retiring out of the same or giving notice on the approach of any passenger, or go into any public place, or into any railroad car or coach, or upon any steamboat, under the penalty of one hundred dollars fine, or thirty days imprisonment in the county jail, or both.

HISTORY: Codes, 1871, § 2738; 1880, § 2761; 1892, § 1009; 1906, § 1086; Hemingway's 1917, § 812; 1930, § 835; 1942, § 2061.

JUDICIAL DECISIONS

1. In general.

Teacher refusing request of county health officer and school authorities to remain away from school until he recovered from smallpox held subject to discharge. Overstreet v. Lord, 160 Miss. 444, 134 So. 169, 1931 Miss. LEXIS 193 (Miss. 1931).

Even if teacher's discharge because, while suffering from smallpox, he exposed pupils to disease was illegal because without notice and opportunity for hearing, he was not entitled to mandamus to compel payment of salary for months following discharge. Overstreet v. Lord, 160 Miss. 444, 134 So. 169, 1931 Miss. LEXIS 193 (Miss. 1931).

§ 97-27-14. Contagious diseases; causing exposure to human immunodeficiency virus (HIV), hepatitis B or hepatitis C; crime of endangerment by bodily substance; violations and penalties.

(1) It shall be unlawful for any person to knowingly expose another person to human immunodeficiency virus (HIV), hepatitis B or hepatitis C. Prior knowledge and willing consent to the exposure is a defense to a charge brought under this subsection. A violation of this subsection shall be a felony.

(2)(a) A person commits the crime of endangerment by bodily substance if the person attempts to cause or knowingly causes a corrections employee, a visitor to a correctional facility or another prisoner or offender to come into contact with blood, seminal fluid, urine, feces or saliva.

(b) As used in this subsection, the following definitions shall apply unless the context clearly requires otherwise:

(i) "Corrections employee" means a person who is an employee or contracted employee of a subcontractor of a department or agency responsible for operating a jail, prison, correctional facility or a person who is assigned to work in a jail, prison or correctional facility.

(ii) "Offender" means a person who is in the custody of the Department of Corrections.

(iii) "Prisoner" means a person confined in a county or city jail.

(c) A violation of this subsection is a misdemeanor unless the person violating this section knows that he is infected with human immunodeficiency virus (HIV), hepatitis B or hepatitis C, in which case it is a felony.

(3) Any person convicted of a felony violation of this section shall be imprisoned for not less than three (3) years nor more than ten (10) years and a fine of not more than Ten Thousand Dollars ($10,000.00), or both.

(4) Any person guilty of a misdemeanor violation of this section shall be punished by imprisonment in the county jail for up to one (1) year and may be fined One Thousand Dollars ($1,000.00), or both.

(5) The provisions of this section shall be in addition to any other provisions of law for which the actions described in this section may be prosecuted.

HISTORY: Laws, 2004, ch. 468, § 1; Laws, 2007, ch. 490, § 1, eff from and after July 1, 2007.

Joint Legislative Committee Notes — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in an internal statutory reference by substituting "this subsection" for "this paragraph" in the second sentence of subsection (1). The Joint Committee ratified the correction at its October 19, 2020, meeting.

JUDICIAL DECISIONS

1. Sufficiency of evidence.

Reasonable jury could have found defendant guilty beyond reasonable doubt of four counts of sexual battery and one count of exposing another to the human immunodeficiency virus. McCoy v. State, 205 So. 3d 687, 2016 Miss. App. LEXIS 228 (Miss. Ct. App.), cert. denied, 205 So. 3d 1082, 2016 Miss. LEXIS 511 (Miss. 2016).

§ 97-27-15. Food sales; selling meat of animal not slaughtered, or unwholesome bread or drink.

Any butcher or other person who shall knowingly sell the flesh of any animal dying otherwise than by slaughter, or slaughtered when diseased, or any baker, brewer, distiller, or other person, who shall knowingly sell unwholesome bread or drink, shall, on conviction thereof, be punished by imprisonment in the penitentiary not more than five years nor less than one year.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 7(14); 1857, ch. 64, art. 216; 1871, § 2703; 1880, § 2939; 1892, § 1262; 1906, § 1337; Hemingway's 1917, § 1071; 1930, § 1100; 1942, § 2336.

Cross References — Sale and inspection of food and drugs, see §§ 75-29-1 et seq.
Care of infected animals and disposition of dead bodies, see § 97-27-3.

JUDICIAL DECISIONS

1. In general.

There is nothing in either this section [Code 1942, § 2336] or Code 1942, § 2338 to indicate that the legislature intended to make it a crime for the owner to use a carcass of an animal described within those sections. King v. Mississippi Power & Light Co., 244 Miss. 486, 142 So. 2d 222, 1962 Miss. LEXIS 469 (Miss. 1962).

Guaranties against unreasonable searches and seizures do not apply to routine inspections by sanitary officers, nor do they apply to inspections made pursuant to advance information that the health laws have been, or are about to be, violated. Grillis v. State, 196 Miss. 576, 17 So. 2d 525, 1944 Miss. LEXIS 237 (Miss. 1944).

Search and seizure of diseased hog meat found in accused's restaurant by city health officers without a search warrant, upon advance information that the health laws had been, or were about to be, violated, did not constitute a violation of the constitutional prohibition against unreasonable searches and seizures. Grillis v. State, 196 Miss. 576, 17 So. 2d 525, 1944 Miss. LEXIS 237 (Miss. 1944).

Evidence that friendly policemen told restaurant proprietor that meat of diseased hog was fit for human consumption if it had been inoculated against cholera did not furnish a valid excuse for slaughtering such hog and bringing it to accused's restaurant for the purpose of selling it for human consumption, but could be considered only by way of extenuation. Grillis v. State, 196 Miss. 576, 17 So. 2d 525, 1944 Miss. LEXIS 237 (Miss. 1944).

Upon conviction of restaurant proprietor of attempt to sell diseased flesh of an animal for human consumption, under indictment bringing offense either under this section [Code 1942, § 2336] or Code 1942, § 2338, but specifically referring to neither section, nor charging that defendant was a butcher or that his occupation might be classified as that of a butcher, sentence should be that imposed by Code 1942, § 2338, under rule that when the facts which constitute a criminal offense may fall under either of two sections, or when there is substantial doubt as to which of the two is to be applied, the case will be referred to the statute which imposes the lesser punishment, having regard for the rule that under the attempt statute no greater punishment may be administered than that prescribed for the actual commission of the offense attempted. Grillis v. State, 196 Miss. 576, 17 So. 2d 525, 1944 Miss. LEXIS 237 (Miss. 1944).

RESEARCH REFERENCES

Am. Jur.

35A Am. Jur. 2d, Food §§ 74 et seq.

30 Am. Jur. Proof of Facts 2d 1, Foreign Substance in Food or Beverage.

31 Am. Jur. Proof of Facts 2d 81, Food Poisoning.

CJS.

36A C.J.S., Food §§ 1 et seq.

§ 97-27-17. Food sales; flour and other provisions.

Any person who shall knowingly and wilfully sell, or hold or offer for sale, any tainted, putrid, unsound, unwholesome, unmerchantable flour, or other provisions, as sound and good; or shall practice any fraud or deception, to put off and sell any damaged, unsound, or unmerchantable provisions, shall, upon conviction, be punished by fine not exceeding five hundred dollars, or imprisonment in the county jail not more than thirty days, or both.

HISTORY: Codes, 1857, ch. 64, art. 217; 1871, § 2704; 1880, § 2940; 1892, § 1263; 1906, § 1338; Hemingway's 1917, § 1072; 1930, § 1101; 1942, § 2337.

Cross References — Sale and inspection of food and drugs, see §§ 75-29-1 et seq.

Care of infected animals and disposition of dead bodies, see § 97-27-3.

RESEARCH REFERENCES

Am. Jur.

35A Am. Jur. 2d, Food §§ 74 et seq.

30 Am. Jur. Proof of Facts 2d 1, Foreign Substance in Food or Beverage.

31 Am. Jur. Proof of Facts 2d 81, Food Poisoning.

CJS.

36A C.J.S., Food §§ 1 et seq.

§ 97-27-19. Food sales; meat; sale of flesh of dead, diseased, and unclean animals; punishment.

If any person shall sell or offer for sale as human food, the flesh of any animal which shall have died a natural death, or been killed or injured by any accident; or shall sell, or offer for sale, or ship for sale, as human food, the flesh of any diseased animal, or of any dog, cat, or other like unclean animal, such person shall be fined, on conviction, not less than one hundred dollars and imprisoned not less than thirty days.

HISTORY: Codes, 1892, § 1264; 1906, § 1339; Hemingway's 1917, § 1073; 1930, § 1102; 1942, § 2338.

Cross References — Sale and inspection of food and drugs, see §§ 75-29-1 et seq.
Care of infected animals and disposition of dead bodies, see § 97-27-3.

JUDICIAL DECISIONS

1. In general.

There is nothing in either this section [Code 1942, § 2338] or Code 1942, § 2336 to indicate that the legislature intended to make it a crime for the owner to use a carcass of an animal described within those sections. King v. Mississippi Power & Light Co., 244 Miss. 486, 142 So. 2d 222, 1962 Miss. LEXIS 469 (Miss. 1962).

Guaranties against unreasonable searches and seizures do not apply to routine inspections by sanitary officers, nor do they apply to inspections made pursuant to advance information that the health laws have been, or are about to be, violated. Grillis v. State, 196 Miss. 576, 17 So. 2d 525, 1944 Miss. LEXIS 237 (Miss. 1944).

Search and seizure of diseased hog meat found in accused's restaurant by city health officers without a search warrant, upon advance information that the health laws had been, or were about to be, violated, did not constitute a violation of the constitutional prohibitions against unreasonable searches and seizures. Grillis v. State, 196 Miss. 576, 17 So. 2d 525, 1944 Miss. LEXIS 237 (Miss. 1944).

Evidence that friendly policemen told restaurant proprietor that meat of diseased hog was fit for human consumption if it had been inoculated against cholera did not furnish a valid excuse for slaughtering such hog and bringing it to accused's restaurant for the purpose of selling it for human consumption, but could be considered only by way of extenuation. Grillis v. State, 196 Miss. 576, 17 So. 2d 525, 1944 Miss. LEXIS 237 (Miss. 1944).

Upon conviction of restaurant proprietor of attempt to sell diseased flesh of an animal for human consumption, under indictment bringing offense either under Code 1942, § 2336 or this section [Code 1942, § 2338], but specifically referring to neither section, nor charging that defendant was a butcher or that his occupation might be classified as that of a butcher, sentence should be that imposed by this section [Code 1942, § 2338], under the rule that when the facts which constitute a criminal offense may fall under either of two sections, or when there is substantial doubt as to which of the two is to be applied, the case will be referred to the statute which imposes the lesser punishment, having regard for the rule that under the attempt statute no greater punishment may be administered than that prescribed for the actual commission of the offense attempted. Grillis v. State, 196 Miss. 576, 17 So. 2d 525, 1944 Miss. LEXIS 237 (Miss. 1944).

RESEARCH REFERENCES

ALR.

Cat as subject of larceny. 55 A.L.R.4th 1080.

Am. Jur.

35A Am. Jur. 2d, Food §§ 74 et seq.

CJS.

36A C.J.S., Food § 69.

§ 97-27-21. Poisons; sale and giving away regulated.

It shall not be lawful for any apothecary, druggist, or other person to sell or give away any article belonging to the class of medicines usually denominated poisons, except in compliance with Sections 97-27-23 and 97-27-25.

HISTORY: Codes, 1857, ch. 31, art. 1; 1871, § 2742; 1880, § 2930; 1892, § 1248; 1906, § 1323; Hemingway's 1917, § 1056; 1930, § 1087; 1942, § 2320.

Cross References — Regulation of poisons, drugs and other controlled substances, see §§ 41-29-1 et seq.

Poisoning food or drink, generally, see § 97-3-61.

Poisoning person with intent to kill where death does not ensue, see § 97-3-63.

Poisoning animals, see § 97-41-17.

RESEARCH REFERENCES

Am. Jur.	CJS.
25 Am. Jur. 2d, Drugs §§ 1, 2, 4, 6, 18 et seq.	72 C.J.S., Poisons §§ 7 et seq.

§ 97-27-23. Poisons; register to be kept; label.

Every druggist, apothecary, or other person, who shall sell or give away except on the written prescription of a physician, any article of medicine belonging to the class usually known as poisons, shall be required to register in a book kept for that purpose, the name, place of residence, age, sex, and color of the person obtaining such poison, the quantity sold, the purpose for which it was required, the day and date on which it was obtained, and the name and place of abode of the person for whom the article is intended; and he shall carefully mark the word "poison" upon the label or wrapper of each package.

HISTORY: Codes, 1857, ch. 31, art. 2; 1871, § 2743; 1880, § 2931; 1892, § 1249; 1906, § 1324; Hemingway's 1917, § 1057; 1930, § 1088; 1942, § 2321.

Cross References — Regulation of poisons, drugs and other controlled substances, see §§ 41-29-1 et seq.

Penalty for violation of this section, see § 97-27-29.

RESEARCH REFERENCES

Am. Jur.	CJS.
25 Am. Jur. 2d, Drugs §§ 1, 4, 6, 8, 18.	72 C.J.S., Poisons §§ 7 et seq.

§ 97-27-25. Poisons; arsenic to be mixed with soot or indigo.

A druggist, apothecary, or other person shall not sell or give away, except to physicians, any quantity of arsenic less than one pound without first mixing soot or indigo therewith in the proportion of one ounce of soot or half an ounce of indigo to the pound of arsenic.

HISTORY: Codes, 1857, ch. 31, art. 4; 1871, § 2744; 1880, § 2932; 1892, § 1250; 1906, § 1325; Hemingway's 1917, § 1058; 1930, § 1089; 1942, § 2322.

Cross References — Regulation of poisons, drugs and other controlled substances, see § 41-29-1 et seq.

Penalty for violation of this section, see § 97-27-29.

RESEARCH REFERENCES

Am. Jur.
25 Am. Jur. 2d, Drugs §§ 1, 2, 4, 6, 8, 18.

CJS.
72 C.J.S., Poisons §§ 7 et seq.

§ 97-27-27. Poisons; arsenic or other deadly poison not to be used in embalming fluid.

A druggist, apothecary, or other person shall not sell or give away any embalming fluid for embalming the dead, which contains arsenic or other deadly poisons; nor shall any embalmer use any fluid containing arsenic or other deadly poison in embalming the dead.

HISTORY: Codes, 1906, § 1326; Hemingway's 1917, § 1059; 1930, § 1090; 1942, § 2323.

Cross References — Penalty for violation of this section, see § 97-27-29.

§ 97-27-29. Poisons; penalty for violation of certain sections.

Any person who shall violate the provisions of Sections 97-27-23, 97-27-25, or 97-27-27, on conviction, shall be fined not exceeding five hundred dollars, or confined in the county jail thirty days, or both.

HISTORY: Codes, 1857, ch. 31, art. 5; 1871, § 2745; 1880, § 2933; 1892, § 1251; 1906, § 1327; Hemingway's 1917, § 1060; 1930, § 1091; 1942, § 2324.

§ 97-27-31. Poisons; not to be sold to minors.

A druggist, apothecary, or other person shall not sell or give away any poison to any minor, and for so doing he shall be punished as for a misdemeanor.

HISTORY: Codes, 1857, ch. 31, art. 3; 1880, § 2934; 1892, § 1252; 1906, § 1328; Hemingway's 1917, § 1061; 1930, § 1092; 1942, § 2325.

Cross References — Statutory definition of term "minor," see § 1-3-27.

Prohibition against sale or gift of tobacco to children, see § 97-32-1 et seq.

JUDICIAL DECISIONS

1. In general.

In an indictment under this section [Code 1942, § 2325], the declaration is insufficient in the case of a minor of the age of discretion, unless it charges that there was something in the character of the minor rendering it dangerous to put chloroform in his hands or that he was ignorant or inexperienced in its use. Meyer v. King, 72 Miss. 1, 16 So. 245, 1894 Miss. LEXIS 72 (Miss. 1894).

Though one selling poison under this section [Code 1942, § 2325] is punishable under Code 1892, § 1954 (Code 1906, § 1527), and guilty of negligence per se, he is not liable for special damages sustained unless the sale is the proximate cause of the injury. Meyer v. King, 72 Miss. 1, 16 So. 245, 1894 Miss. LEXIS 72 (Miss. 1894).

§ 97-27-33. Poisons; inhalation of toxic vapors from model glue; unlawful glue sales to minors.

(1) It shall be unlawful for any person to intentionally smell or inhale the fumes of any type of model glue for the purpose of causing a condition of, or inducing symptoms of, intoxication, elation, euphoria, dizziness, excitement, irrational behavior, exhilaration, paralysis, stupefaction, or dulling of the senses or nervous system; or for the purpose of, in any manner, changing, distorting or disturbing the audio, visual or mental processes.

(2) As used in this section, the term “model glue” shall mean any glue or cement of the type commonly used in the building of model airplanes, boats and automobiles and which contains one or more of the following volatile solvents: (a) toluol, (b) hexane, (c) trichlorethylene, (d) acetone, (e) toluene, (f) ethyl acetate, (g) methyl ethyl ketone, (h) trichlorochthane, (i) isopropanol, (j) methyl isobutyl ketone, (k) methyl cellosolve acetate, (l) cyclohexanone, or (m) any other solvent, material, substance, chemical or combination thereof having the property of releasing toxic vapors.

(3) It shall be unlawful for any person to sell or otherwise transfer possession of any type of model glue to any minor for any purpose whatsoever, unless the minor receiving possession of the model glue is the child or ward of and under the lawful custody of such person.

(4) Any person violating any provision of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five hundred dollars ($500.00), or imprisoned for not more than ninety (90) days, or both, for each such offense.

HISTORY: Codes, 1942, § 2329.5; Laws, 1968, ch. 347, §§ 1-4, eff from and after thirty days after passage (approved July 12, 1968).

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

ALR.

Penal offense of sniffing glue or similar volatile intoxicants. 32 A.L.R.3d 1438.

§ 97-27-35. Repealed.

Repealed by Laws, 1997, ch. 578, § 15, eff from and after February 1, 1998.

§ 97-27-35. [Laws, 1994, ch. 486, § 9]

Editor's Notes — Former § 97-27-35 related to a requirement that tobacco products be sold in sealed containers.

Laws of 2004, ch. 396, § 1 provides:

"Sections 5, 6, 7 and 9 of Chapter 486, General Laws of 1994, are repealed."

CHAPTER 29.

CRIMES AGAINST PUBLIC MORALS AND DECENCY

In General. 97-29-1
Obscene Materials, Performances and Devices. 97-29-101

IN GENERAL

Sec.
97-29-1. Adultery and fornication; unlawful cohabitation.
97-29-3. Adultery and fornication; between teacher and pupil.
97-29-5. Adultery and fornication; between certain persons forbidden to intermarry.
97-29-7. Adultery and fornication; between guardian and ward.
97-29-9. Adultery and fornication; going out of state to marry.
97-29-11. Illegitimate children; person becoming natural parent of second illegitimate child; jurisdiction.
97-29-13. Bigamy; definition; penalty.
97-29-15. Bigamy; exceptions.
97-29-17. Bribery; participant in professional or amateur games or other athletic contests; wrestling excepted.
97-29-19. Dead bodies; disinterment for sale or wantonness.
97-29-21. Dead bodies; buying or receiving.
97-29-23. Dead bodies; opening graves for certain purposes.
97-29-25. Desecration of cemetery; desecration of human corpse.
97-29-27. Incest; marriage within prohibited degrees.
97-29-29. Incest; persons divorced for incest not to cohabit or copulate.
97-29-31. Indecent exposure.
97-29-33. Repealed.
97-29-35. Repealed.
97-29-37 through 97-29-41. Repealed.
97-29-43. Polygamy; teaching of.
97-29-45. Obscene electronic communications.
97-29-47. Profanity or drunkenness in public place.
97-29-49. Prostitution; report to Department of Child Protection Services for suspected child sexual abuse or neglect if minor involved; immunity from prosecution if trafficked person involved.
97-29-51. Prostitution; misdemeanor procuring services of prostitute; felony promoting prostitution; penalties.
97-29-53. Repealed.
97-29-55. Seduction of female over age of eighteen by promised or pretended marriage.
97-29-57. Stallion or jack not to be kept in public view or permitted to run at large.
97-29-59. Unnatural intercourse.
97-29-61. Voyeurism; trespass by "peeping Tom"; when victim is adult; when victim is child under sixteen.
97-29-63. Photographing or filming another without permission where there is expectation of privacy; when victim is adult; when victim is child under sixteen.
97-29-65. Strip clubs prohibited within one-fourth mile of church, school, kindergarten, or courthouse.

§ 97-29-1. Adultery and fornication; unlawful cohabitation.

If any man and woman shall unlawfully cohabit, whether in adultery or fornication, they shall be fined in any sum not more than five hundred dollars each, and imprisoned in the county jail not more than six months; and it shall not be necessary, to constitute the offense, that the parties shall dwell together publicly as husband and wife, but it may be proved by circumstances which show habitual sexual intercourse.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 1(58); 1857, ch. 64, art. 8; 1871, § 2486; 1880, § 2700; 1892, § 953; 1906, § 1029; Hemingway's 1917, § 754; 1930, § 772; 1942, § 1998.

Cross References — Adultery as cause for divorce, see § 93-5-1.

Prohibition against cohabitation by divorced persons, see § 93-5-29.

Incestuous marriage between kindred, see § 97-29-27.

Prohibition against cohabitation or copulation by persons divorced for incest, see § 97-29-29.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Indictment or affidavit charging offense.
3. Evidence.
4. —Admissibility.
5. —Sufficiency.
6. Instructions.
7. Miscellaneous.
8. Child Custody.

1. In general.

Sections 97-29-1, 97-29-3, 97-29-5, 97-29-7, and 97-29-9, which prohibit adultery and fornication under specified circumstances, do not give any individual a private cause of action for their breach. Saunders v. Alford, 607 So. 2d 1214, 1992 Miss. LEXIS 605 (Miss. 1992).

One acquitted of a charge under this section [Code 1942, § 1998] is not put twice in jeopardy when charged under Code 1942, § 2000, penalizing incest. Ratcliff v. State, 234 Miss. 724, 107 So. 2d 728, 1958 Miss. LEXIS 542 (Miss. 1958).

This section [Code 1942, § 1998] is no obstacle to a bona fide attempt to invest unlawful cohabitation with the attributes of a common-law marriage. Oatis v. Mingo, 199 Miss. 896, 26 So. 2d 453, 1946 Miss. LEXIS 259 (Miss. 1946).

Cohabitation defined. Spikes v. State, 98 Miss. 483, 54 So. 1, 1910 Miss. LEXIS 87 (Miss. 1910).

Habitual sexual intercourse held gist of offense under statute. Spikes v. State, 98 Miss. 483, 54 So. 1, 1910 Miss. LEXIS 87 (Miss. 1910).

A teacher who, during a short period of time, commits a few acts of sexual intercourse with a pupil, openly in the schoolroom is not guilty of cohabitation with her. Brown v. State, 8 So. 257 (Miss. 1890).

It is not necessary to constitute the crime, that the parties should represent themselves as married. Kinard v. State, 57 Miss. 132, 1879 Miss. LEXIS 30 (Miss. 1879).

Criminal intercourse once shown is presumed to continue if the parties be living under the same roof, although those who dwell with them are not prepared to depose to the fact. Carotti v. State, 42 Miss. 334, 1868 Miss. LEXIS 72 (Miss. 1868).

2. Indictment or affidavit charging offense.

Indictment against defendants charging them with the crime of unlawful cohabitation and adultery on a certain date and then continuously until the day of the filing and the returning of the indictment, defendants not being married to each other, was sufficient to apprise defendants of the nature and character of the accusation against them, and, if the indictment was deficient in any particular, the defect would have been amendable if the point had been raised in the trial court, which was not done. Patterson v. State, 190 Miss. 643, 1 So. 2d 499, 1941 Miss. LEXIS 86 (Miss. 1941).

Affidavit held insufficient to charge habitual sexual intercourse. Jones v. State, 133 Miss. 801, 98 So. 342, 1923 Miss. LEXIS 193 (Miss. 1923).

Indictment for unlawful cohabitation need not allege that one was a man and the other a woman. Tynes v. State, 93 Miss. 119, 46 So. 535, 1908 Miss. LEXIS 90 (Miss. 1908).

3. Evidence.

State must show parties were not married to each other as alleged in indictment. Dean v. State, 139 Miss. 515, 104 So. 295, 1925 Miss. LEXIS 167 (Miss. 1925).

Proof of acts within two years before indictment makes a case in prosecution for unlawful cohabitation. State v. Meyer, 135 Miss. 878, 101 So. 349, 1924 Miss. LEXIS 84 (Miss. 1924).

It is necessary to show that the parties, whether dwelling together or not, habitually indulge in sexual intercourse. Granberry v. State, 61 Miss. 440, 1884 Miss. LEXIS 106 (Miss. 1884).

4. —Admissibility.

Where evidence in prosecutions for unlawful cohabitation disclosed cohabitation by the defendants within the period of limitation, evidence of continuous cohabitation by them for several years prior, and up to the beginning of, the limitation period was admissible to illustrate or characterize the relation and conduct of the defendants shown to have existed or to have occurred within the time covered by the indictment. Housley v. State, 198 Miss. 837, 23 So. 2d 749, 1945 Miss. LEXIS 257 (Miss. 1945); Strong v. State, 199 Miss. 17, 23 So. 2d 750, 1945 Miss. LEXIS 266 (Miss. 1945).

In prosecution for unlawful cohabitation, the fact that the defendants had been acquitted of a similar offense some time prior to the finding of the indictment under which they were tried did not preclude the admission of evidence of improper familiarity and criminal intimacy between the defendants prior to the findings of the former indictment. Housley v. State, 198 Miss. 837, 23 So. 2d 749, 1945 Miss. LEXIS 257 (Miss. 1945); Strong v. State, 199 Miss. 17, 23 So. 2d 750, 1945 Miss. LEXIS 266 (Miss. 1945).

Evidence tending to show improper familiarity and criminal intimacy subsequent to the finding of the indictment is admissible to illustrate and characterize the relations and conduct of the parties, shown to have existed or occurred within the time covered by the indictment, if such act be not too remote in point of time. Stewart v. State, 64 Miss. 626, 2 So. 73, 1887 Miss. LEXIS 82 (Miss. 1887).

5. —Sufficiency.

Evidence of acts of sexual intercourse, without showing cohabitation, was insufficient to sustain conviction for unlawful cohabitation. Cutrer v. State, 154 Miss. 80, 121 So. 106, 1929 Miss. LEXIS 105 (Miss. 1929).

Uncorroborated testimony of female codefendant is sufficient to sustain conviction for unlawful cohabitation. Cutrer v. State, 154 Miss. 80, 121 So. 106, 1929 Miss. LEXIS 105 (Miss. 1929).

Proof necessary to sustain conviction for unlawful cohabitation stated; when one or two acts relied on, proof must show habitual existence of relation. Lee v. Oxford, 134 Miss. 647, 99 So. 509, 1924 Miss. LEXIS 318 (Miss. 1924).

It is unnecessary to show that the parties dwell together or publicly avow the relationship; it is sufficient to show habitual concubinage or lying together. Granberry v. State, 61 Miss. 440, 1884 Miss. LEXIS 106 (Miss. 1884).

6. Instructions.

Conviction of unlawful cohabitation in adultery would be reversed where instruction granted on behalf of state wholly failed to require jury to believe beyond a reasonable doubt from the circumstances or otherwise, that either of defendants was married to some other person at the time complained of before the jury could return a verdict of guilty, and all the proof disclosed that the relations between defendants were such as to constitute a valid common law marriage between them except for the fact that one of the defendants denied the relationship in toto. Patterson v. State, 190 Miss. 643, 1 So. 2d 499, 1941 Miss. LEXIS 86 (Miss. 1941).

7. Miscellaneous.

Decedent's survivors sought to recover proceeds from a bank account that a joint tenant shared with decedent; because the two were cohabitating and were not married, a confidential relationship existed, which led to a presumption of undue influence. The joint tenant failed to rebut the presumption. Dean v. Kavanaugh, 920 So. 2d 528, 2006 Miss. App. LEXIS 71 (Miss. Ct. App. 2006).

A chancellor did not err in dismissing a complaint in which a woman sought "equitable division of partnership assets" accumulated during 13 years of cohabitation with her companion where the parties never entered into a ceremonial marriage, the woman was not an innocent partner to a void marriage, and she was not destitute but was well-compensated during and after the relationship; the legislature has not extended the rights enjoyed by married people to those who choose merely to cohabit, and cohabitation remains a "crime against public morals and decency" under this section. Davis v. Davis, 643 So. 2d 931, 1994 Miss. LEXIS 487 (Miss. 1994).

While remarks in argument to jury by district attorney in prosecution for unlawful cohabitation can be shown either by special bill of exceptions or the reporter's notes, in either case they must be shown before the supreme court can know whether they were harmful. Strong v. State, 199 Miss. 17, 23 So. 2d 750, 1945 Miss. LEXIS 266 (Miss. 1945).

Error of justice in failing to properly sentence accused did not deprive him of right to plead former conviction. Smithey v. State, 93 Miss. 257, 46 So. 410, 1908 Miss. LEXIS 82 (Miss. 1908).

Where in the trial of the accused for unlawful cohabitation no imprisonment was inflicted, the justice of the peace trying him should have an alias capias served on defendant and impose some imprisonment. Smithey v. State, 93 Miss. 257, 46 So. 410, 1908 Miss. LEXIS 82 (Miss. 1908).

A white man and a negro woman cannot maintain an assignment of error in the supreme court based on the fact that the district attorney appealed to the jury to discountenance miscegenation. Stewart v. State, 64 Miss. 626, 2 So. 73, 1887 Miss. LEXIS 82 (Miss. 1887).

8. Child Custody.

After the parties' divorce in which the former wife was awarded primary custody of the son, she moved four times, dated several men, and cohabited with a man. The chancellor found that the child's best interests required a change in custody and awarded the former husband primary physical custody. Hill v. Hill, 942 So. 2d 207, 2006 Miss. App. LEXIS 250 (Miss. Ct. App.), cert. denied, 942 So. 2d 164, 2006 Miss. LEXIS 758 (Miss. 2006).

RESEARCH REFERENCES

ALR.

Validity of statute making adultery and fornication criminal offense. 41 A.L.R.3d 1338.

Admissibility, in rape case, of evidence that accused rape or attempted to rape person other than prosecutrix. 2 A.L.R.4th 330.

Am. Jur.

2 Am. Jur. 2d, Adultery and Fornication §§ 1 et seq.

1 Am. Jur. Proof of Facts, Adultery, Proofs 1-6.

24 Am. Jur. Proof of Facts 2d 515, Defense to Charges of Sex Offense.

CJS.

37 C.J.S., Fornication §§ 1 et seq.

§ 97-29-3. Adultery and fornication; between teacher and pupil.

If any teacher and any pupil under eighteen (18) years of age of such teacher, not being married to each other, shall have sexual intercourse, each with the other, they shall, for every such offense, be fined in any sum, not more than five hundred dollars ($500.00) each, and the teacher may be imprisoned not less than three (3) months nor more than six (6) months.

HISTORY: Codes, 1892, § 954; 1906 § 1030; Hemingway's 1917, § 755; 1930, § 773; 1942, § 1999; Laws, 1980, ch. 517, eff from and after passage (approved May 20, 1980).

Cross References — Dissemination of sexually oriented material to persons under eighteen, see § 97-5-27.

Crime of adultery or fornication, generally, see § 97-29-1.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Lesser nonincluded offenses.

1. In general.

Sections 97-29-1, 97-29-3, 97-29-5, 97-29-7, and 97-29-9, which prohibit adultery and fornication under specified circumstances, do not give any individual a private cause of action for their breach. Saunders v. Alford, 607 So. 2d 1214, 1992 Miss. LEXIS 605 (Miss. 1992).

2. Lesser nonincluded offenses.

Sex between a teacher and pupil is not a lesser-included offense of touching a child for lustful purposes as it is possible to be guilty of touching a child for lustful purposes without also being guilty of sex between a teacher and pupil because touching a child for lustful purposes does not include all of the elements of sex between teacher and pupil as sex between a teacher and pupil contains elements pertaining to sexual intercourse which requires penetration, and touching a child for lustful purposes does not. Dewitt v. State, 269 So. 3d 388, 2018 Miss. App. LEXIS 231 (Miss. Ct. App.), cert. denied, 258 So. 3d 286, 2018 Miss. LEXIS 528 (Miss. 2018).

Defendant was not entitled to a jury instruction that sex between a teacher and pupil was a lesser-included offense of touching a child for lustful purposes because the offense of sex between a teacher and pupil contained elements pertaining to sexual intercourse which required penetration, and the offense of touching a child for lustful purposes did not; defendant was found to be in a position of trust or authority over the victim, and she was found guilty of handling, touching or rubbing the victim for the purpose of gratifying her lust, which were not elements of the offense of sex between a teacher and pupil. Dewitt v. State, 269 So. 3d 388, 2018 Miss. App. LEXIS 231 (Miss. Ct. App.), cert. denied, 258 So. 3d 286, 2018 Miss. LEXIS 528 (Miss. 2018).

RESEARCH REFERENCES

ALR.

Admissibility, in rape case, of evidence that accused raped or attempted to rape person other than prosecutrix. 2 A.L.R.4th 330.

Necessity or permissibility of mental examination to determine competency or credibility of complainant in sexual offense prosecution. 45 A.L.R.4th 310.

Am. Jur.

2 Am. Jur. 2d, Adultery and Fornication §§ 1 et seq.

24 Am. Jur. Proof of Facts 2d 515, Defense to Charges of Sex Offense.

CJS.

37 C.J.S., Fornication §§ 1 et seq.

§ 97-29-5. Adultery and fornication; between certain persons forbidden to inter-marry.

Persons being within the degrees within which marriages are prohibited by law to be incestuous and void, or persons who are prohibited from marrying by reason of blood and between whom marriage is declared to be unlawful and void, who shall cohabit, or live together as husband and wife, or be guilty of a single act of adultery or fornication, upon conviction, shall be punished by imprisonment in the penitentiary for a term not exceeding ten (10) years.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 7(5); 1857, ch. 64, art. 9; 1871, § 2787; 1880, § 2701; 1892, § 955; 1906, § 1031; Hemingway's 1917, § 756; 1930, § 774; 1942, § 2000; Laws, 1956, ch. 241; Laws, 1960, ch. 240.

Cross References — Unlawful and incestuous marriages, generally, see §§ 93-1-1, 93-1-3.

Crime of adultery or fornication, generally, see § 97-29-1.

Crime of incestuous marriage, see § 97-29-27.

Persons divorced for incest being prohibited from having copulation, see § 97-29-29.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Evidence.

1. In general.

With respect to defendant who pleaded guilty to incest, a day-for-day 10-year sentence and $10,000 fine did not exceed the statutory maximum because he was not eligible for parole under Miss. Code Ann. § 47-7-3(1)(b) or for earned time allowance under Miss. Code Ann. § 47-5-139(1)(d), and the fine was authorized under Miss. Code Ann. § 99-19-32(1). Cochran v. State, 969 So. 2d 119, 2007 Miss. App. LEXIS 476 (Miss. Ct. App. 2007).

Sections 97-29-1, 97-29-3, 97-29-5, 97-29-7, and 97-29-9, which prohibit adultery and fornication under specified circumstances, do not give any individual a private cause of action for their breach. Saunders v. Alford, 607 So. 2d 1214, 1992 Miss. LEXIS 605 (Miss. 1992).

Consent is not a necessary element of incest. Where a defendant is charged with incest with a minor female, the consent of the minor female will not change the character of the act of the defendant. The defendant will be held to answer for his own conduct and it is his acts which complete the crime of incest. The defendant's guilt is measured by his knowledge and his intent and not by the knowledge or intent of the minor female on whom he committed the offense. Keeton v. State, 549 So. 2d 960, 1989 Miss. LEXIS 445 (Miss. 1989).

This section [Code 1942, § 2000], as amended by Chapter 241, Laws of 1956, was not violated by the mere cohabitation between negroes and whites. Ratcliff v. State, 234 Miss. 724, 107 So. 2d 728, 1958 Miss. LEXIS 542 (Miss. 1958); Rose v. State, 234 Miss. 731, 107 So. 2d 730, 1958 Miss. LEXIS 543 (Miss. 1958).

Since a marriage between a white person and a negro is not incestuous but is miscegenetic, and an incestuous relationship is an element of the denounced offense, Code 1942, § 2000 is not violated where a white person and a negro cohabit, or live together as husband and wife, in absence of allegations as to an incestuous relationship. Ratcliff v. State, 234 Miss. 724, 107 So. 2d 728, 1958 Miss. LEXIS 542 (Miss. 1958); Rose v. State, 234 Miss. 731, 107 So. 2d 730, 1958 Miss. LEXIS 543 (Miss. 1958).

One is not put twice in jeopardy by being charged under this section [Code 1942, § 2000] after having been acquitted under Code 1942, § 1998, penalizing adultery and fornication. Ratcliff v. State, 234 Miss. 724, 107 So. 2d 728, 1958 Miss. LEXIS 542 (Miss. 1958).

Cohabitation, adultery or fornication with one's adopted daughter is not incest within the purview of this section [Code 1942, § 2000]. State v. Lee, 196 Miss. 311, 17 So. 2d 277, 1944 Miss. LEXIS 193 (Miss. 1944).

This section [Code 1942, § 2000], by omitting the words "of consanguinity" after the word "degrees," as in Code 1871, evidently changes the law as announced in Chancellor v. State, 47 M 278, where it is said that "cohabitation by a man with his step-daughter is not incestuous." Chancellor v. State, 47 Miss. 278, 1872 Miss. LEXIS 74 (Miss. 1872).

2. Evidence.

In a prosecution for incest, the trial court did not err in failing to order a blood test of the prosecuting witness to ascertain whether she was actually the defendant's blood relative where the defendant had never denied that the girl was his daughter and had admitted on direct examination that she was his daughter; nor was it error for the court to admit evidence of prior sexual acts between the defendant and the prosecuting witness. Insofar as Skinner v. State (1945) 198 Miss 505, 23 So. 2d 501, held that evidence of more than one crime of incest was inadmissible in a prosecution for a single incestuous offense, that decision was in error. Speagle v. State, 390 So. 2d 990, 1980 Miss. LEXIS 2163 (Miss. 1980), limited, Mitchell v. State, 539 So. 2d 1366, 1989 Miss. LEXIS 141 (Miss. 1989).

A conviction for adultery would be reversed where the state did not prove that at least one of the parties to the alleged act was married at the time; the trial court also erred in permitting the state to amend the indictment to change the date of the alleged offense where, in light of the fact that each separate act of adultery constitutes a separate offense, the amendment in effect charged a new and distinct offense from that for which the grand jury indicted defendant. Van Norman v. State, 365 So. 2d 644, 1978 Miss. LEXIS 2429 (Miss. 1978).

RESEARCH REFERENCES

ALR.

Consent as element of incest. 36 A.L.R.2d 1299.

Sexual intercourse between persons related by half blood as incest. 72 A.L.R.2d 706.

Incest as included within charge of rape. 76 A.L.R.2d 484.

Admissibility, in incest prosecution, of evidence of alleged victim's prior sexual acts with persons other than accused. 97 A.L.R.3d 967.

Admissibility, in rape case, of evidence that accused rape or attempted to rape person other than prosecutrix. 2 A.L.R.4th 330.

Am. Jur.

2 Am. Jur. 2d, Adultery and Fornication §§ 1 et seq.

41 Am. Jur. 2d, Incest § 1 et seq.

24 Am. Jur. Proof of Facts 2d 515, Defense to Charges of Sex Offense.

CJS.

37 C.J.S., Fornication §§ 1 et seq.

42 C.J.S., Incest §§ 1 et seq.

§ 97-29-7. Adultery and fornication; between guardian and ward.

If any guardian and ward of such guardian, not being married to each other, shall have sexual intercourse each with the other, they shall for every such offense be fined in any sum not more than five hundred dollars ($500.00) each and the guardian shall be imprisoned not less than three (3) months nor more than six (6) months.

HISTORY: Codes, 1892, § 956; 1906, § 1032; Hemingway's 1917, § 757; 1930, § 775; 1942, § 2001; Laws, 1980, ch. 388, eff from and after passage (approved April 28, 1980).

Cross References — Crime of adultery or fornication, generally, see § 97-29-1.

JUDICIAL DECISIONS

1. In general.

Sections 97-29-1, 97-29-3, 97-29-5, 97-29-7, and 97-29-9, which prohibit adultery and fornication under specified circumstances, do not give any individual a private cause of action for their breach. Saunders v. Alford, 607 So. 2d 1214, 1992 Miss. LEXIS 605 (Miss. 1992).

RESEARCH REFERENCES

ALR.

Necessity or permissibility of mental examination to determine competency or credibility of complainant in sexual offense prosecution. 45 A.L.R.4th 310.

Am. Jur.

2 Am. Jur. 2d, Adultery and Fornication §§ 1 et seq.

24 Am. Jur. Proof of Facts 2d 515, Defense to Charges of Sex Offense.

CJS.

37 C.J.S., Fornication §§ 1 et seq.

§ 97-29-9. Adultery and fornication; going out of state to marry.

If any persons, citizens or residents of this state, who are prohibited by the laws thereof from marrying, because of kindred, shall go out of this state for the purpose of marrying, and shall marry in any other state or country and return to this state and live together and cohabit as man and wife, or be guilty of a single act of copulation, they shall, on conviction, be punished, notwithstanding their marriage out of this state, by imprisonment in the penitentiary not longer than ten years, or be fined five hundred dollars, or both.

HISTORY: Codes, 1892, § 957; 1906, § 1033; Hemingway's 1917, § 758; 1930, § 776; 1942, § 2002.

Cross References — Unlawful marriages, generally, see §§ 93-1-1, 93-1-3.

Incestuous marriages, see § 97-29-27.

Persons divorced for incest being prohibited from having copulation, see § 97-29-29.

JUDICIAL DECISIONS

1. In general.

Sections 97-29-1, 97-29-3, 97-29-5, 97-29-7, and 97-29-9, which prohibit adultery and fornication under specified circumstances, do not give any individual a private cause of action for their breach.

Saunders v. Alford, 607 So. 2d 1214, 1992 Miss. LEXIS 605 (Miss. 1992).

RESEARCH REFERENCES

Am. Jur.
2 Am. Jur. 2d, Adultery and Fornication §§ 1 et seq.
24 Am. Jur. Proof of Facts 2d 515, Defense to Charges of Sex Offense.

CJS.
37 C.J.S., Fornication §§ 1 et seq.

§ 97-29-11. Illegitimate children; person becoming natural parent of second illegitimate child; jurisdiction.

(1) If any person, who shall have previously become the natural parent of an illegitimate child within or without this state by coition within or without this state, shall again become the natural parent of an illegitimate child born within this state, he or she shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment in the county jail for not less than thirty (30) days nor more than ninety (90) days or by a fine of not more than Two Hundred Fifty Dollars ($250.00), or both. A subsequent conviction hereunder shall be punishable by imprisonment in the county jail for not less than three (3) months nor more than six (6) months or by a fine of not more than Five Hundred Dollars ($500.00), or both. Provided, however, that for the purpose of this section, multiple births shall be construed to be the birth of one (1) child.

(2) The circuit court of the county in which said illegitimate child is born shall have jurisdiction of any action brought under this section. No male person shall be convicted solely on the uncorroborated testimony of the female person giving birth to the child.

HISTORY: Codes, 1942, § 2018.6; Laws, 1964, ch. 341, §§ 1-3(¶¶ 1-3); Laws, 2004, ch. 399, § 1, eff from and after July 1, 2004.

Cross References — Uniform law on paternity, see §§ 93-9-1 et seq.
Another section derived from same 1942 code section, see § 99-11-9.
Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 97-29-13. Bigamy; definition; penalty.

Every person having a husband or wife living, who shall marry again, and every unmarried person who shall knowingly marry the husband or wife of another living, except in the cases hereinafter named, shall be guilty of bigamy, and imprisoned in the penitentiary not longer than ten years.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 7(1); 1857, ch. 64, art. 28; 1871, § 2505; 1880, § 2721; 1892, § 975; 1906, § 1051; Hemingway's 1917, § 779; 1930, § 795; 1942, § 2019.

Cross References — Unlawful marriages, see §§ 93-1-1 et seq.

Annulment of marriage, see § 93-7-1 et seq.
Preaching of polygamy, see § 97-29-43.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Indictment.
3. —Sufficiency of indictment.
4. Proof.
5. —Presumptions and burden of proof.
6. Defenses.
7. Instructions.

1. In general.

A substantive element of the charge of bigamy and of the testimony is the fact that the first wife was alive at the time of the second marriage. Grace v. State, 212 Miss. 784, 55 So. 2d 495, 1951 Miss. LEXIS 512 (Miss. 1951).

Where a district attorney represented the wife in divorce proceedings and a decree was rendered on February 6, 1950 instead of February 7, 1950, when defendant married second wife, the district attorney should have foreseen that more than likely he would be called upon to testify in bigamy prosecution and he should have withdrawn from the prosecution or refrain from testifying. Turner v. State, 212 Miss. 590, 55 So. 2d 228, 1951 Miss. LEXIS 487 (Miss. 1951).

2. Indictment.

Indictment for bigamy must set forth something in nature of allegation with reference to time, place and circumstance of former marriage, or it must name person with whom former marriage is alleged to have been contracted. Wash v. State, 206 Miss. 858, 41 So. 2d 29, 1949 Miss. LEXIS 307 (Miss. 1949).

An indictment charging bigamy under Code 1942, § 2019 need not set out the exceptions contained in succeeding section [Code 1942, § 2020]. Bryant v. State, 179 Miss. 739, 176 So. 590, 1937 Miss. LEXIS 67 (Miss. 1937).

Essential averments with respect to first and second marriages stated; indictment must sufficiently charge each element of offense to enable accused to prepare defense. Graves v. State, 134 Miss. 547, 99 So. 364, 1924 Miss. LEXIS 301 (Miss. 1924).

3. —Sufficiency of indictment.

Insufficiency of bigamy indictment may be raised for first time on appeal when indictment is fatally defective for failure to set forth time, place and circumstance of former marriage, or name of person with whom former marriage is alleged to have been contracted. Wash v. State, 206 Miss. 858, 41 So. 2d 29, 1949 Miss. LEXIS 307 (Miss. 1949).

An indictment charging that defendant married a certain party when he was then and there legally married to another was sufficient to charge that such other was living when the second marriage was consummated. Bryant v. State, 179 Miss. 739, 176 So. 590, 1937 Miss. LEXIS 67 (Miss. 1937).

Indictment charging that defendant on a certain day and at a certain place, being legally married to a certain party, did wilfully, unlawfully, feloniously, knowingly, and bigamously marry and have for his wife a certain other, was sufficient. Bryant v. State, 179 Miss. 739, 176 So. 590, 1937 Miss. LEXIS 67 (Miss. 1937).

An indictment charging that marriage relation still existed than and there between accused and a certain party when he then and there married another sufficiently alleged that accused had two living wives at the same time. Bryant v. State, 179 Miss. 739, 176 So. 590, 1937 Miss. LEXIS 67 (Miss. 1937).

Indictment held to sufficiently negative statutory exceptions. McQueen v. State, 143 Miss. 787, 109 So. 799, 1926 Miss. LEXIS 322 (Miss. 1926).

4. Proof.

It is necessary to allege and prove that a spouse of a first marriage is living when a second marriage is contracted, to constitute bigamy. Bryant v. State, 179 Miss. 739, 176 So. 590, 1937 Miss. LEXIS 67 (Miss. 1937).

In prosecution for bigamy, where guilt of defendant was fully established by other evidence, introduction of first wife who was sworn but withdrawn before she had testified against defendant was harmless error. Bryant v. State, 179 Miss. 739, 176 So. 590, 1937 Miss. LEXIS 67 (Miss. 1937).

Proof by state of ceremonial marriage by person introduced by defendant as minister at parsonage or home of such alleged preacher was sufficient without proof that minister was ordained or authorized to perform ceremony. McQueen v. State, 143 Miss. 787, 109 So. 799, 1926 Miss. LEXIS 322 (Miss. 1926).

Corroborative proof of ceremonial marriage under law of Louisiana by showing cohabitation and birth of children is not error. McQueen v. State, 143 Miss. 787, 109 So. 799, 1926 Miss. LEXIS 322 (Miss. 1926).

State must prove valid marriage contracted before second marriage; common-law marriage relied on must be recognized in state where contracted; defendant's common-law marriage in Louisiana not former marriage constituting basis for bigamy prosecution. Graves v. State, 134 Miss. 547, 99 So. 364, 1924 Miss. LEXIS 301 (Miss. 1924).

If the first marriage be proven by the minister who solemnized the rites, and the marriage license with the certificate thereon, it will be sufficient. It is not a valid objection that the minister was not properly ordained as a minister of the gospel according to the rules and regulations of his church. Taylor v. State, 52 Miss. 84, 1876 Miss. LEXIS 169 (Miss. 1876).

5. —Presumptions and burden of proof.

In a prosecution for bigamy there is no presumption of a dissolution of the former marriage. Grace v. State, 212 Miss. 784, 55 So. 2d 495, 1951 Miss. LEXIS 512 (Miss. 1951).

Burden is on the state to prove that a former spouse is still living at the time of a defendant's second marriage in order to establish the crime of bigamy since such fact is a vital part of the corpus delicti, and while the presumption of continuance of life may be recognized, such presumption is at least neutralized if not overcome by the presumption of innocence in a criminal case, so that in the absence of evidence in addition to the presumption of continuance of life there is no case for submission to the jury, and a defendant is entitled to a directed verdict. White v. State, 183 Miss. 351, 184 So. 303, 1938 Miss. LEXIS 250 (Miss. 1938).

A presumption of innocence at least neutralizes, if it does not overcome, the presumption of life and in the absence of other competent evidence of probative value to aid the presumption that the former spouse is living there is no case for submission to the jury; the fact that the former spouse is living must not depend upon presumption merely, but must be established by proof, for the presumption of innocence supplemented by the presumption of the validity of the second marriage must prevail over the presumption that the former spouse is still living. White v. State, 183 Miss. 351, 184 So. 303, 1938 Miss. LEXIS 250 (Miss. 1938).

Burden was on accused to prove that his second marriage was within the exception of Code 1906, § 1052. Bennett v. State, 100 Miss. 684, 56 So. 777, 1911 Miss. LEXIS 60 (Miss. 1911).

6. Defenses.

In a prosecution for bigamy the fact that a subsequent divorce is a matter of affirmative defense and the state need not initially negative such defense by either allegation or proof. Grace v. State, 212 Miss. 784, 55 So. 2d 495, 1951 Miss. LEXIS 512 (Miss. 1951).

The good faith of the defendant in contracting a second marriage on a mistake of law is no defense to a charge of bigamy. Burnley v. State, 201 Miss. 234, 29 So. 2d 94, 1947 Miss. LEXIS 390 (Miss. 1947).

Defendant's misinterpretation of a summons in his wife's divorce action against him as setting the date of trial, and his mistaken belief that a decree for temporary allowances constituted a decree of divorce, were mistakes of law and no defense to a charge of bigamy predicated on his remarriage pending the divorce action. Burnley v. State, 201 Miss. 234, 29 So. 2d 94, 1947 Miss. LEXIS 390 (Miss. 1947).

7. Instructions.

Where the first wife was known by two names, the question to be considered by the jury is the identity of the woman, and not her name, and the court may so instruct. Taylor v. State, 52 Miss. 84, 1876 Miss. LEXIS 169 (Miss. 1876).

It is improper to charge the jury that a "marriage was good without any ceremony, and by the mere consent of the parties, if the parties intended marriage and that intent sufficiently appear." It is deficient (under statutes then in force) in not adding that such consent and intent must be followed by actual cohabitation thereunder as man and wife. Taylor v. State, 52 Miss. 84, 1876 Miss. LEXIS 169 (Miss. 1876).

RESEARCH REFERENCES

ALR.

Validity of Bigamy and Polygamy Statutes and Constitutional Provisions. 22 A.L.R. 6th 1.

Am. Jur.

11 Am. Jur. 2d, Bigamy §§ 1 et seq.

CJS.

10 C.J.S., Bigamy §§ 1 et seq.

§ 97-29-15. Bigamy; exceptions.

Section 97-29-13 shall not extend to any person whose husband or wife shall have been absent for seven successive years, without being known to such person, within the time, to be living; nor to any person whose husband or wife shall have absented himself or herself from his or her husband or wife, and remained without the United States continually for seven years; nor to any person, by reason of any former marriage which shall have been dissolved by the decree of a competent court, unless the said decree provide that such person shall not be at liberty to marry again; nor to any person, by reason of any former marriage which shall have been pronounced void by the sentence or decree, of a competent court, for the nullity of the marriage contract; nor to any person by reason of any former marriage, contracted by such person within the age of legal consent, and which shall have been annulled by the decree of a competent court.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 7(2); 1857, ch. 64, art. 29; 1871, § 2506; 1880, § 2722; 1892, § 976; 1906, § 1052; Hemingway's 1917, § 780; 1930, § 796; 1942, § 2020.

Cross References — Presumption of death, see § 13-1-23.
Preaching of polygamy, see § 97-29-43.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Absence of spouse.
3. Dissolution of first marriage.

1. In general.

A substantive element of the charge of bigamy is the fact that the first wife was alive at the time of the second marriage. Grace v. State, 212 Miss. 784, 55 So. 2d 495, 1951 Miss. LEXIS 512 (Miss. 1951).

The good faith of the defendant in contracting a second marriage on a mistake of law is no defense to a charge of bigamy.

Burnley v. State, 201 Miss. 234, 29 So. 2d 94, 1947 Miss. LEXIS 390 (Miss. 1947).

An indictment charging bigamy under a certain section of the statute need not set out the exceptions contained in this section [Code 1942, § 2020]. Bryant v. State, 179 Miss. 739, 176 So. 590, 1937 Miss. LEXIS 67 (Miss. 1937).

Indictment held to sufficiently negative statutory exceptions. McQueen v. State, 143 Miss. 787, 109 So. 799, 1926 Miss. LEXIS 322 (Miss. 1926).

Burden was on accused to prove that his second marriage was within the exception of Code 1906, § 1052. Bennett v. State, 100 Miss. 684, 56 So. 777, 1911 Miss. LEXIS 60 (Miss. 1911).

2. Absence of spouse.

The law presumes, in favor of the validity of a marriage contracted by a person, where a husband or wife by a former marriage has been absent, and not heard from, and not known by such person to be living for the statutory number of years preceding the second marriage, that the absentee is dead; and the presumption will be acted on in a prosecution for bigamy. Gibson v. State, 38 Miss. 313, 1860 Miss. LEXIS 2 (Miss. 1860).

So as to the presumptions of the validity of a marriage within the statutory number of years where the first spouse was not afterwards heard from, it will prevail. Spears v. Burton, 31 Miss. 547, 1856 Miss. LEXIS 115 (Miss. 1856).

3. Dissolution of first marriage.

In a prosecution for bigamy there is no presumption of a dissolution of the former marriage. Grace v. State, 212 Miss. 784, 55 So. 2d 495, 1951 Miss. LEXIS 512 (Miss. 1951).

In a prosecution for bigamy the fact of a subsequent divorce is a matter of affirmative defense and the state need not initially negative such defense by either allegation or proof. Grace v. State, 212 Miss. 784, 55 So. 2d 495, 1951 Miss. LEXIS 512 (Miss. 1951).

Where a district attorney represented the wife in divorce proceedings and a decree was rendered on February 6, 1950 instead of February 7, 1950, when defendant married second wife, the district attorney should have foreseen that more than likely he would be called upon to testify in bigamy prosecution and he should have withdrawn from the prosecution or refrained from testifying. Turner v. State, 212 Miss. 590, 55 So. 2d 228, 1951 Miss. LEXIS 487 (Miss. 1951).

Defendant's misinterpretation of a summons in his wife's divorce action against him as setting the date of trial, and his mistaken belief that a decree for temporary allowances constituted a decree of divorce, were mistakes of law and no defense to a charge of bigamy predicated on his remarriage pending the divorce action. Burnley v. State, 201 Miss. 234, 29 So. 2d 94, 1947 Miss. LEXIS 390 (Miss. 1947).

RESEARCH REFERENCES

ALR.

Mistaken belief in existence, validity or effect of divorce or separation as defense to prosecution for bigamy or allied offense. 56 A.L.R.2d 915.

Validity of Bigamy and Polygamy Statutes and Constitutional Provisions. 22 A.L.R. 6th 1.

Am. Jur.

11 Am. Jur. 2d, Bigamy §§ 15 et seq.

CJS.

10 C.J.S., Bigamy §§ 18 et seq.

§ 97-29-17. Bribery; participant in professional or amateur games or other athletic contests; wrestling excepted.

(1) Whoever gives, promises, or offers to any professional or amateur baseball, football, basketball, or tennis player, or any player who participates in or expects to participate in any professional or amateur game or sport, or any person participating or expecting to participate in any other athletic

contest or any coach, manager, or trainer of any team or participant or prospective participant in any such game, contest, or sport, anything of value with the intent to influence such participant to lose or try to lose or cause to be lost or to limit his or his team's margin of victory in any baseball, football, basketball or tennis game, boxing, or other athletic contest in which such player or participant is taking part or expects to take part or has any duty in connection therewith shall be guilty of a felony and upon conviction shall be punished by imprisonment in the county jail for not less than six (6) months nor more than five (5) years in the penitentiary, or by a fine of not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000.00), or by both such fine and imprisonment.

(2) Any professional or amateur baseball, football, basketball, or tennis player or any boxer or participant or prospective participant in any sport or game or a manager, coach, or trainer of any team or individual participant or prospective participant in such game, contest, or sport who solicits or accepts anything of value to influence him to lose or try to lose or cause to be lost or to limit his or his team's margin of victory in any baseball, football, basketball, tennis or boxing contest or any other game or sport in which he is taking part or expects to take part or has any duties in connection therewith shall be guilty of a felony and upon conviction shall be punished by imprisonment in the county jail for not less than six (6) months nor more than five (5) years in the penitentiary, or by a fine of not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000.00), or by both such fine and imprisonment.

(3) The provisions of this section shall not be deemed to include any wrestling matches, it being expressly provided hereby that wrestling matches shall be deemed to be shows or exhibitions and not athletic contests.

HISTORY: Codes, 1942, § 2034.5; Laws, 1954, ch. 232, §§ 1-3(¶¶ 1-3).

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

RESEARCH REFERENCES

ALR.

Bribery in athletic contests. 49 A.L.R.2d 1234.

Recovery in tort for wrongful interference with chance to win game, sporting event, or contest. 85 A.L.R.4th 1048.

Am. Jur.

12 Am. Jur. 2d, Bribery § 15.

CJS.

11 C.J.S., Bribery §§ 1 et seq.

§ 97-29-19. Dead bodies; disinterment for sale or wantonness.

Every person who shall remove the dead body of any human being from the grave or other place of interment for the purpose of selling the same or for mere wantonness, or who shall wantonly dig into or open the grave or other place of interment where the remains of any dead human body is interred, or wantonly disturb the remains of any dead human body therein interred, shall upon conviction be imprisoned in the penitentiary not exceeding five years or in the county jail not more than one year, or be fined not more than five hundred dollars or both.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art 12, Title 7(10); 1857, ch. 64, art. 66; 1871, § 2715; 1880, § 2764; 1892, § 1023; 1906, § 1100; Hemingway's 1917, § 826; 1930, § 850; 1942, § 2076; Laws, 1920, ch. 300.

Cross References — Delivery of unclaimed dead bodies of hospital patients to medical schools, see § 41-39-7.

JUDICIAL DECISIONS

1. In general.

This section [Code 1942, § 2076] does not apply in a situation where the question of guilt or innocence of the accused cannot be determined except by exhumation and autopsy of the body of the deceased, the court in this case may and should order disinterment even against the will of the relatives. Roberts v. State, 210 Miss. 777, 50 So. 2d 356, 1951 Miss. LEXIS 313 (Miss. 1951).

RESEARCH REFERENCES

ALR.

Removal and reinterment of remains. 21 A.L.R.2d 472.

Construction and application of graverobbing statutes. 52 A.L.R.3d 701.

Am. Jur.

22A Am. Jur. 2d, Dead Bodies §§ 90 et seq., 94 et seq., 98, 126.

CJS.

25A C.J.S., Dead Bodies §§ 4, 19-23, 27-29.

§ 97-29-21. Dead bodies; buying or receiving.

Every person who shall purchase or receive the dead body of any human being, knowing the same to have been disinterred contrary to Section 97-29-19, shall, on conviction, be subjected to the punishment therein prescribed.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 7(11); 1857, ch. 64, art. 67; 1871, § 2716; 1880, § 2765; 1892, § 1024; 1906, § 1101; Hemingway's 1917, § 827; 1930, § 851; 1942, § 2077.

Cross References — Delivery of unclaimed dead bodies of hospital patients to medical schools, see § 41-39-7.

RESEARCH REFERENCES

ALR.

Removal and reinterment of remains. 21 A.L.R.2d 472.

Construction and application of graverobbing statutes. 52 A.L.R.3d 701.

Am. Jur.

22A Am. Jur. 2d, Dead Bodies §§ 90 et seq., 94 et seq., 98, 126.

CJS.

25A C.J.S., Dead Bodies §§ 4, 19-23, 27-29.

§ 97-29-23. Dead bodies; opening graves for certain purposes.

Every person who shall open a grave or other place of interment with intent to move the dead body of any human being for the purpose of selling the same, or for the purpose of dissection, or to steal the coffin or any part thereof, or the vestments or other articles interred with the dead body, or any of them, shall, upon conviction, be punished by imprisonment in the penitentiary not exceeding two years, or in the county jail not more than six months, or by fine of not more than three hundred dollars or both.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 7(12); 1857, ch. 64, art. 68; 1871, § 2717; 1880, § 2766; 1892, § 1025; 1906, § 1102; Hemingway's 1917, § 828; 1930, § 852; 1942, § 2078.

Cross References — Delivery of unclaimed dead bodies of hospital patients to medical schools, see § 41-39-7.

JUDICIAL DECISIONS

1. In general.

This section [Code 1942, § 2078] does not apply in a situation where the question of guilt or innocence of the accused cannot be determined except by exhumation and autopsy of the body of the deceased, the court in this case may and should order disinterment even against the will of the relatives. Roberts v. State, 210 Miss. 777, 50 So. 2d 356, 1951 Miss. LEXIS 313 (Miss. 1951).

RESEARCH REFERENCES

ALR.

Construction and application of graverobbing statutes. 52 A.L.R.3d 701.

Am. Jur.

22A Am. Jur. 2d, Dead Bodies §§ 90 et seq., 94 et seq., 98, 126.

CJS.

25A C.J.S., Dead Bodies § 4.

§ 97-29-25. Desecration of cemetery; desecration of human corpse.

(1)(a) Every person who shall knowingly and willfully dig up, except as otherwise provided by law, obliterate, or in any way desecrate any cemetery where human dead are interred, or cause through word, deed or action the same to happen, shall upon conviction be imprisoned for not more than one (1) year in the county jail or fined not more than Five Hundred Dollars ($500.00), or both, in the discretion of the court. In addition to any penalties that the court is otherwise authorized to impose the court may, in its discretion, order such restitution as it deems appropriate.

(b) In construing this subsection (1), a cemetery shall mean any plot of ground (i) on which are grave markers of stone, wood, metal or any other material recognizable as marking graves, or (ii) the boundaries of which are defined by a recorded plat, a fence line or corner markers, or trees, or are defined in any other discernible manner.

(2)(a) Every person who shall knowingly and willfully dig up, except as otherwise provided by law, or in any way desecrate any corpse or remains of any human being, or cause through word, deed or action the same to happen, shall upon conviction be guilty of a felony and shall be imprisoned for not more than three (3) years or fined not more than Five Thousand Dollars ($5,000.00), or both, in the discretion of the court.

(b) (b) The prohibitions of this subsection (2) shall not apply to the good faith harvesting of any organ for transplant or to any good faith use of a cadaver or body part for medical or scientific education or research.

HISTORY: Codes, 1942, § 2076.5; Laws, 1971, ch. 398, § 1; Laws, 1972, ch. 351, § 1; Laws, 1983, ch. 406; Laws, 2004, ch. 387, § 1, eff from and after July 1, 2004.

Federal Aspects— Native American graves protection and repatriation act, P. L. 101-601.

RESEARCH REFERENCES

ALR.
Liability for desecration of graves and tombstones. 77 A.L.R.4th 108.

Am. Jur.
5A Am. Jur. Pl & Pr Forms (Rev), Cemeteries, Forms 71 et seq. (desecration of, or trespass on, graves).

§ 97-29-27. Incest; marriage within prohibited degrees.

If any person shall marry within the degrees prohibited by law, he shall be guilty of incest, and on conviction thereof he shall be fined five hundred dollars or imprisoned in the penitentiary not longer than ten years, or punished by both such fine and imprisonment, and such marriage shall be void.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 7(5); 1857, ch. 64, art. 184; 1871, § 2647; 1880, § 2895; 1892, § 1168; 1906, § 1246; Hemingway's 1917, § 976; 1930, § 1004; 1942, § 2234.

Cross References — Computation of relationship, see §§ 1-3-71, 1-3-73.
Unlawful marriages, see §§ 93-1-1, 93-1-3.
Marriage between kindred as cause for divorce, see § 93-5-1.
Adultery and fornication between kindred, see § 97-29-5.

JUDICIAL DECISIONS

1. In general.
Since a marriage between a white person and a negro is not incestuous but is miscegenetic, and an incestuous relationship is an element of the denounced offense, Code 1942, § 2000 is not violated

where a white person and a negro cohabit, or live together as husband and wife, in absence of allegations as to an incestuous relationship. Ratcliff v. State, 234 Miss. 724, 107 So. 2d 728, 1958 Miss. LEXIS 542 (Miss. 1958); Rose v. State, 234 Miss. 731, 107 So. 2d 730, 1958 Miss. LEXIS 543 (Miss. 1958).

Construing Code 1942, §§ 457 and 458, as setting forth conditions under which marriages are prohibited as incestuous under this section [Code 1942, § 2234], there is no provision which clearly deals with specific act of son-in-law in marrying his mother-in-law and order sustaining demurrer to indictment should be affirmed. State ex rel. District Attorney v. Winslow, 208 Miss. 753, 45 So. 2d 574, 1950 Miss. LEXIS 293 (Miss. 1950).

RESEARCH REFERENCES

ALR.

Sexual intercourse between persons related by half blood as incest. 72 A.L.R.2d 706.

Prosecutrix in incest case as accomplice or victim. 74 A.L.R.2d 705.

Incest as included within charge of rape. 76 A.L.R.2d 484.

Admissibility, in incest prosecution, of evidence of alleged victim's prior sexual acts with persons other than accused. 97 A.L.R.3d 967.

Am. Jur.

41 Am. Jur. 2d, Incest § 1 et seq.

CJS.

42 C.J.S., Incest §§ 1 et seq.

§ 97-29-29. Incest; persons divorced for incest not to cohabit or copulate.

If persons divorced for incest shall, after such divorce, cohabit or live together as man and wife, or be guilty of a single act of adultery or fornication, such persons so offending shall be guilty of incest and fined, on conviction, five hundred dollars or be imprisoned in the penitentiary not longer than ten years or both.

HISTORY: Codes, 1857, ch. 64, art. 185; 1871, § 2648; 1880, § 2896; 1892, § 1169; 1906, § 1247; Hemingway's 1917, § 977; 1930, § 1005; 1942, § 2235.

Cross References — Prohibition against cohabitation or copulation by divorced persons, see § 93-5-29.

Adultery and fornication between kindred, see § 97-29-5.

RESEARCH REFERENCES

Am. Jur.

41 Am. Jur. 2d, Incest § 1 et seq.

CJS.

42 C.J.S., Incest §§ 1 et seq.

§ 97-29-31. Indecent exposure.

A person who willfully and lewdly exposes his person, or private parts thereof, in any public place, or in any place where others are present, or procures another to so expose himself, is guilty of a misdemeanor and, on conviction for a first offense, shall be punished by a fine not exceeding Five Hundred Dollars ($500.00) or be imprisoned not exceeding six (6) months, or both. Upon conviction for a second offense within five (5) years, such person shall be guilty of a misdemeanor and shall be punished by a fine of not more than One Thousand Dollars ($1,000.00) or shall be imprisoned not exceeding one (1) year, or both. Upon conviction of a third or subsequent offense within five (5) years, such person shall be guilty of a felony and shall be punished by a fine of not more than Five Thousand Dollars ($5,000.00) or shall be imprisoned for not more than five (5) years in the State Penitentiary, or both. It is not a violation of this statute for a woman to breast-feed.

HISTORY: Codes, 1892, § 1218; 1906, § 1294; Hemingway's 1917, § 1027; 1930, § 1058; 1942, § 2290; Laws, 1971, ch. 448, § 1; Laws, 2006, ch. 520, § 5; Laws, 2012, ch. 510, § 2, eff from and after July 1, 2012.

Cross References — Prohibition of person convicted of crimes affecting children or other violent crimes from being licensed as foster parent or a foster home, see § 43-15-6.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor or felony violation, see § 99-19-73.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Search and seizure.
3. Jury instructions.

1. In general.

Statute only prohibited nudity accompanied by lewdness, to be constitutional, the statute had to include an exception in the case of a person engaged in expressing a matter of serious literary, artistic, scientific, or political value. Richmond v. City of Corinth, 816 So. 2d 373, 2002 Miss. LEXIS 29 (Miss. 2002).

Wilfulness and lewdness are essential elements of the misdemeanor charged in this section [Code 1942, § 2290]. Lott v. Potacocowa Creek Drainage Dist., 193 So. 2d 126, 1966 Miss. LEXIS 1275 (Miss. 1966).

A woman sun-bathing in the nude on her husband's private tract of approximately 141/2 acres of wooded land, not visible from any public road, who immediately began to clothe herself when uninvited visitors appeared on the premises was not guilty of wilfully and lewdly exposing her person under the provisions of this section [Code 1942, § 2290]. Pendergrass v. State, 193 So. 2d 126, 1966 Miss. LEXIS 1276 (Miss. 1966).

It is necessary under this section [Code 1942, § 2290] to charge that the exposure was "lewdly" made. Stark v. State, 81 Miss. 397, 33 So. 175, 1902 Miss. LEXIS 163 (Miss. 1902).

2. Search and seizure.

Defendant's act of removing her shirt in a public parking lot, although not a violation of Miss. Code Ann. § 97-29-31(Rev. 2000), gave an officer sufficient reasonably suspicion to authorize an investigatory stop; the question as to whether an officer acts reasonably in making an investigatory stop is not whether a driver is suspected of a felony or misdemeanor, but whether a law enforcement officer acts reasonably in stopping a vehicle to investigate a complaint short of arrest. Ginn v. State, 860 So. 2d 675, 2003 Miss. LEXIS 512 (Miss. 2003).

3. Jury instructions.

In a case in which defendant was convicted of enticing a child for sexual purposes, defendant was not entitled to a lesser included offense instruction on misdemeanor indecent exposure; based on the overwhelming evidence, no reasonable jury could have found defendant not guilty of any element of the principal charge. Delashmit v. State, 991 So. 2d 1215, 2008 Miss. LEXIS 501 (Miss. 2008).

RESEARCH REFERENCES

ALR.

Criminal offense predicated upon indecent exposure. 94 A.L.R.2d 1353.

Topless or bottomless dancing or similar conduct as offense. 49 A.L.R.3d 1084.

What constitutes "public place" within meaning of statutes prohibiting commission of sexual act in public place. 96 A.L.R.3d 692.

Indecent exposure: what is "person". 63 A.L.R.4th 1040.

Search and seizure: reasonable expectation of privacy in public restroom. 74 A.L.R.4th 508.

What constitutes "public place" within meaning of state statute or local ordinance prohibiting indecency or commission of sexual act in public place. 95 A.L.R.5th 229.

Validity of State and Municipal Indecent Exposure Statutes and Ordinances. 71 A.L.R.6th 283.

Am. Jur.

50 Am. Jur. 2d, Lewdness, Indecency, and Obscenity §§ 1, 2, 16.

34 Am. Jur. Trials 1, Representing Sex Offenders and the Chemical Castration Defense.

24 Am. Jur. Proof of Facts 2d 515, Defense to Charges of Sex Offense.

CJS.

67 C.J.S., Obscenity §§ 9, 10.

§ 97-29-33. Repealed.

Repealed by Laws, 1983, ch. 498, § 7, eff from and after July 1, 1983.

§ 97-29-33. [Codes, Hemingway's 1921 Supp. §§ 1142a, 1142b; 1930, § 1054; 1942, § 2286; Laws, 1920, ch. 213]

Editor's Notes — Former § 97-29-33 was entitled: Moving pictures; obscene or immoral exhibitions unlawful.

§ 97-29-35. Repealed.

Repealed by Laws, 1979, ch. 475, § 4, eff from and after July 1, 1979.

§ 97-29-35. [Codes, 1942, §§ 2286.3, 2286.4; Laws, 1970, ch. 329, §§ 1, 2]

Editor's Notes — Former § 97-29-35 was entitled: Motion pictures; previews of restricted pictures not to be shown general audiences; penalties.

§§ 97-29-37 through 97-29-41. Repealed.

Repealed by Laws, 1983, ch. 498, § 7, eff from and after July 1, 1983.

§ 97-29-37. [Codes, 1892, § 1216; 1906, § 1292; Hemingway's 1917, § 1025; 1930, § 1056; 1942, § 2288; Laws, 1884, p. 81; Laws, 1904, ch. 143]

§ 97-29-39. [Codes, 1942, §§ 2674-02, 2674-03; Laws, 1962, ch. 322, §§ 2, 3]

§ 97-29-41. [Codes, 1942, § 2674-12; Laws, 1962, ch. 322, § 12]

Editor's Notes — Former § 97-29-37 was entitled: Obscene pictures or indecent articles; sale, distribution or advertising prohibited.

Former § 97-29-39 was entitled: Obscene printed or written material; publication, sale or distribution prohibited.

Former § 97-29-41 was entitled: Obscene printed or written material; contempt; penalty for disobeying injunction or restraining order.

§ 97-29-43. Polygamy; teaching of.

If any person shall teach another the doctrines, principles, or tenets, or any of them, of polygamy; or shall endeavor so to do; or shall induce or persuade another by words or acts, or otherwise, to embrace or adopt polygamy, or to emigrate to any other state, territory, district, or country for the purpose of embracing, adopting, or practicing polygamy, or shall endeavor so to do, he shall, on conviction, be fined not less than twenty-five dollars nor more than five hundred dollars, or be imprisoned in the county jail not less than one month nor more than six months, or both.

HISTORY: Codes, 1892, § 1257; 1906, § 1333; Hemingway's 1917, § 1066; 1930, § 1097; 1942, § 2330.

Cross References — Bigamy, see §§ 97-29-13, 97-29-15.

RESEARCH REFERENCES

ALR.

Validity of Bigamy and Polygamy Statutes and Constitutional Provisions. 22 A.L.R. 6th 1.

§ 97-29-45. Obscene electronic communications.

(1) It shall be unlawful for any person or persons:

(a) To make any comment, request, suggestion or proposal by means of telecommunication or electronic communication which is obscene, lewd or lascivious with intent to abuse, threaten or harass any party to a telephone conversation, telecommunication or electronic communication;

(b) To make a telecommunication or electronic communication with intent to terrify, intimidate or harass, and threaten to inflict injury or physical harm to any person or to his property;

(c) To make a telephone call, whether or not conversation ensues, without disclosing his identity and with intent to annoy, abuse, threaten or harass any person at the called number;

(d) To make or cause the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number;

(e) To make repeated telephone calls, during which conversation ensues, solely to harass any person at the called number; or

(f) Knowingly to permit a computer or a telephone of any type under his control to be used for any purpose prohibited by this section.

(2) Upon conviction of any person for the first offense of violating subsection (1) of this section, such person shall be fined not more than Five Hundred Dollars ($500.00) or imprisoned in the county jail for not more than six (6) months, or both.

(3) Upon conviction of any person for the second offense of violating subsection (1) of this section, the offenses being committed within a period of five (5) years, such person shall be fined not more than One Thousand Dollars ($1,000.00) or imprisoned in the county jail for not more than one (1) year, or both.

(4) For any third or subsequent conviction of any person violating subsection (1) of this section, the offenses being committed within a period of five (5) years, such person shall be guilty of a felony and fined not more than Two Thousand Dollars ($2,000.00) and/or imprisoned in the State Penitentiary for not more than two (2) years, or both.

(5) The provisions of this section do not apply to a person or persons who make a telephone call that would be covered by the provisions of the federal Fair Debt Collection Practices Act, 15 USCS Section 1692 et seq.

(6) Any person violating this section may be prosecuted in the county where the telephone call, conversation or language originates in case such call, conversation or language originates in the State of Mississippi. In case the call, conversation or language originates outside of the State of Mississippi then such person shall be prosecuted in the county to which it is transmitted.

(7) For the purposes of this section, telecommunication and electronic communication mean and include any type of telephonic, electronic or radio communications, or transmission of signs, signals, data, writings, images and sounds or intelligence of any nature by telephone, including cellular telephones, wire, cable, radio, electromagnetic, photoelectronic or photo-optical system or the creation, display, management, storage, processing, transmission or distribution of images, text, voice, video or data by wire, cable or wireless means, including the Internet.

(8) No person shall be held to have violated this section solely for providing access or connection to telecommunications or electronic communications services where the services do not include the creation of the content of the communication. Companies organized to do business as commercial broadcast radio stations, television stations, telecommunications service providers, Internet service providers, cable service providers or news organizations shall not be criminally liable under this section.

HISTORY: Codes, 1942, § 2291.5; Laws, 1956, ch. 261; Laws, 1964, ch. 351, § 1; Laws, 1982, ch. 385; Laws, 2001, ch. 468, § 1; Laws, 2002, ch. 503, § 1, eff from and after July 1, 2002.

Cross References — Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see § 97-43-1 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Telephone harassment.

1. In general.

Statutory language clearly prescribed for punishment only a class of true threats, and not social or political advocacy. Shackelford v. Shirley, 948 F.2d 935, 1991 U.S. App. LEXIS 29016 (5th Cir. Miss. 1991).

Because trial judge's jury instructions tracked language of statute, jury's verdict represented finding that defendant, on trial for violating statute by placing telephone call to former supervisor stating that next time supervisor came by defendant's premises he would be "toting an ass whippin," engaged in unprotected, threatening speech. Shackelford v. Shirley, 948 F.2d 935, 1991 U.S. App. LEXIS 29016 (5th Cir. Miss. 1991).

Telephone harassment statute prohibiting making telephone call threatening to inflict injury or physical harm, with intent to terrify, intimidate, or harass, is not unconstitutionally overbroad on its face. Shackelford v. Shirley, 948 F.2d 935, 1991 U.S. App. LEXIS 29016 (5th Cir. Miss. 1991).

Conviction of defendant for violation of state telephone harassment statute was upheld, and did not violate First Amendment, where defendant placed telephone call to former supervisor stating that next time supervisor came by defendant's premises he would be "toting an ass whippin." Shackelford v. Shirley, 948 F.2d 935, 1991 U.S. App. LEXIS 29016 (5th Cir. Miss. 1991).

The State could properly proceed against a defendant under subsection (1)(c) of this section, which prohibits making a harassing telephone call, rather than under subsection (1)(e) of this section, which prohibits repeated harassing telephone calls, even though the defendant allegedly made 7 harassing telephone calls to a single individual, so long as the indictment was clear and unequivocal. Gray v. State, 549 So. 2d 1316, 1989 Miss. LEXIS 436 (Miss. 1989).

An indictment improperly joined 8 counts of making harassing telephone calls where the indictment charged the defendant with 2 different crimes on 2 different dates against 2 different victims. Gray v. State, 549 So. 2d 1316, 1989 Miss. LEXIS 436 (Miss. 1989).

A prosecutor's comments during closing argument in a prosecution for making harassing telephone calls that the defendant was "a coward and a terrorist" and that the calls were "a form of terrorism. . . that is employed by a coward" did not warrant a mistrial. Making harassing phone calls is a cowardly act and a strong argument could be made that in the context of the case, the terms used by the prosecutor were accurate to describe the sort of person who calls someone up for the purpose of making harassing phone calls. Gray v. State, 549 So. 2d 1316, 1989 Miss. LEXIS 436 (Miss. 1989).

Evidence was sufficient to support conviction for making an obscene telephone call, where an obscene call was traced to the defendant's residence, which was three doors down from the victim's, the victim positively identified defendant's voice as that of the caller's, and where the caller had stated his first name and his telephone number, and they were the same as defendant's; the testimony of the victim as to obscene calls she had received, in addition to the call for which defendant had been prosecuted, was properly admitted where the calls were interrelated, and were admissible to prove identity, guilty knowledge, intent, and motive. Weeks v. State, 465 So. 2d 334, 1985 Miss. LEXIS 1964 (Miss. 1985).

Evidence of obscene telephone calls other than call charged in indictment is admissible if interrelated to charged call or if relevant to proof of identity, guilty knowledge, intent and motive. Weeks v. State, 465 So. 2d 334, 1985 Miss. LEXIS 1964 (Miss. 1985).

Evidence obtained by use of telephone trapping device is sufficient to support conviction for making obscene telephone call. Weeks v. State, 465 So. 2d 334, 1985 Miss. LEXIS 1964 (Miss. 1985).

The words "I want you," standing alone, were neither profane, vulgar, indecent, threatening, obscene, nor insulting, and defendant's demurrer to an indictment under this section [Code 1972, § 97-29-45] should have been sustained. Sanders v. State, 306 So. 2d 636, 1975 Miss. LEXIS 1804 (Miss. 1975).

In a prosecution for using obscene language over the telephone, the testimony of the complainant that she had received other obscene calls was admissible to explain why a holding device was placed on her telephone by the telephone company, but it was error for the trial court to allow her to testify on redirect examination, over the objection of the defendant, that the voice of the person making the previous calls, for which the defendant was not charged, was the same as the one who made the call which was the basis of the indictment. Younger v. State, 301 So. 2d 300, 1974 Miss. LEXIS 1659 (Miss. 1974).

Where the indictment fails to specify the allegedly profane language used by the defendant, a motion to quash should be granted. Spears v. State, 253 Miss. 108, 175 So. 2d 158, 1965 Miss. LEXIS 974 (Miss. 1965).

It is reversible error not to require the state's prosecuting witness to testify orally to the jury the allegedly indecent words which were spoken to her by the defendant, such words being the gravamen of the indictment. Spears v. State, 253 Miss. 108, 175 So. 2d 158, 1965 Miss. LEXIS 974 (Miss. 1965).

In a prosecution under this section [Code 1942, § 2291.5] it was reversible error to ask the defendant if he had not called up 17 women (naming them) in addition to the prosecuting witness and used the same indecent language to them. Spears v. State, 253 Miss. 108, 175 So. 2d 158, 1965 Miss. LEXIS 974 (Miss. 1965).

Where the accused had not objected to the prosecuting witness testifying, the contention that the trial court erred in permitting the witness to testify that she was the former wife of the accused could not be considered for the first time on appeal. Likewise, contentions as to the amendment of an affidavit to show the language used, and the sufficiency of a justice of the peace court judgment which failed to state the name of the threatened person, could not be considered for the first time on appeal. Shortridge v. State, 243 Miss. 710, 140 So. 2d 89, 1962 Miss. LEXIS 397 (Miss. 1962).

2. Telephone harassment.

In defendant's trial on charges of telephone harassment, a violation of Miss. Code Ann. § 97-29-45(1)(a), the trial court did not err in admitting the sheriff's rebuttal testimony in which the sheriff relied on his notes because defendant failed to establish that the prosecution violated Miss. Unif. Cir. & County Ct. Prac. R 9.04(A) by failing to tender the sheriff's notes during discovery. The sheriff's testimony was not exculpatory; the notes were used during rebuttal and not in the State's case-in-chief; and the testimony did not consist of a statement by defendant. Therefore, the notes did not constitute a written statement required to be provided to the defense during discovery under Rule 9.04(A). Yates v. State, 919 So. 2d 1122, 2005 Miss. App. LEXIS 556 (Miss. Ct. App. 2005), cert. denied, 926 So. 2d 922, 2006 Miss. LEXIS 71 (Miss. 2006).

OPINIONS OF THE ATTORNEY GENERAL

Defendant may be prosecuted for obscene phone call violations in either county where call originated or county where call was received. Green, Sept. 30, 1992, A.G. Op. #92-0526.

Obscene phone call violations, under this section, may be prosecuted in either county where call originated or in county where call was received. Gentry, June 7, 1993, A.G. Op. #93-0362.

A conviction for violating this section permits a possible punishment of confinement in the state penitentiary, and therefore a violation of the statute is a felony offense. Blakney, Aug. 8, 1997, A.G. Op. #97-0425.

RESEARCH REFERENCES

ALR.

Misuse of telephone as minor criminal offense. 97 A.L.R.2d 503.

Right of telephone or telegraph company to refuse, or discontinue, service because of use of improper language. 32 A.L.R.3d 1041.

Validity, construction, and application of state criminal statute forbidding use of telephone to annoy or harass. 95 A.L.R.3d 411.

Validity and construction of statutes or ordinances prohibiting profanity or profane swearing or cursing. 5 A.L.R.4th 956.

Forum state's jurisdiction over nonresident defendant in action based on obscene or threatening telephone call from out of state. 37 A.L.R.4th 852.

Prohibition of obscene or harassing telephone calls in interstate or foreign communication under 47 USCA § 223. 50 A.L.R. Fed. 541.

Am. Jur.

12 Am. Jur. 2d, Blasphemy and Profanity §§ 1 et seq.

50 Am. Jur. 2d, Lewdness, Indecency, and Obscenity § 24.

12A Am. Jur. Pl & Pr Forms (Rev), Fright, Shock, and Mental Disturbance, Form 42 (complaint, petition, or declaration – damages resulting from defendant's harassing phone calls – by former spouse).

16 Am. Jur. Proof of Facts 2d 493, Liability for Abusive Language.

§ 97-29-47. Profanity or drunkenness in public place.

If any person shall profanely swear or curse, or use vulgar and indecent language, or be drunk in any public place, in the presence of two (2) or more persons, he shall, on conviction thereof, be fined not more than one hundred dollars ($100.00) or be imprisoned in the county jail not more than thirty (30) days or both.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 4(1); 1857, ch. 64, art. 340; 1871, § 2833; 1880, § 2974; 1892, § 1219; 1906, § 1295; Hemingway's 1917, § 1028; 1930, § 1059; 1942, § 2291; Laws, 1912, ch. 212; Laws, 1971, ch. 448, § 2, eff from and after passage (approved March 25, 1971).

Cross References — Ejection of disorderly and profane persons from hotels, see § 75-73-13.

Disorderly conduct and breach of the peace, see §§ 97-35-1 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. Profanity.
2. Public drunkenness.

1. Profanity.

Officer had cause to arrest defendant for public drunkenness or public profanity based on his personal observation of defendant engaging in an expletive-laden tantrum in a public street with bystanders present. Harvey v. State, 195 So. 3d 231, 2016 Miss. App. LEXIS 380 (Miss. Ct. App. 2016).

The circuit court committed manifest error in determining that the defendant's conduct gave rise to probable cause for his arrest for a violation of the statutory prohibition against public profanity where (1) during a conversation between the defendant and a police officer and another man, the defendant said, "I'm tired of this God d— police sticking their nose in s— that doesn't even involve them," (2) the officer warned the defendant not to use profanities, and (3) the defendant then voiced additional profane remarks towards the officer. Brendle v. City of Houston, 759 So. 2d 1274, 2000 Miss. App. LEXIS 263 (Miss. Ct. App. 2000).

The statute provides that the profanities uttered must be said in a public place and in the presence of two or more persons; however, there is no requirement that two or more persons testify that the vulgar words spoken were actually offensive or that the two present actually heard the words spoken. Brendle v. City of Houston, 759 So. 2d 1274, 2000 Miss. App. LEXIS 263 (Miss. Ct. App. 2000).

A state cannot, consistently with the constitutional guaranty of freedom of expression, excise, as offensive conduct, one particular scurrilous epithet from the public discourse, either upon the theory that its use is inherently likely to cause violent reaction, or upon a general assertion that the state, acting as the guardian of public morality, may properly remove this offensive word from the public vocabulary. Cohen v. California, 403 U.S. 15, 91 S. Ct. 1780, 29 L. Ed. 2d 284, 1971 U.S. LEXIS 32 (U.S. 1971).

The conviction for disturbing the peace by offensive conduct of one who entered a county courthouse wearing a jacket bearing the plainly visible words "Fuck the Draft", would be reversed where the conviction rested solely upon speech and there was no showing of an intent to incite disobedience to or disruption of the draft, punishment for the mere assertion of a position on the draft being inconsistent with the First and Fourteenth Amendments. Cohen v. California, 403 U.S. 15, 91 S. Ct. 1780, 29 L. Ed. 2d 284, 1971 U.S. LEXIS 32 (U.S. 1971).

"Public place," within purview of city ordinance making it criminal offense to profanely swear or curse or use vulgar or indecent language in public place, is one wherein, by general invitation, members of the public attend for reasons of business, entertainment, instruction or the like, and are welcome so long as they conform to what is customarily done there. Nelson v. Natchez, 197 Miss. 26, 19 So. 2d 747, 1944 Miss. LEXIS 271 (Miss. 1944).

Restaurant is a "public place" within the meaning of city ordinance making it criminal offense to profanely swear or curse or use vulgar or indecent language in public place, even though only white people are admitted thereat. Nelson v. Natchez, 197 Miss. 26, 19 So. 2d 747, 1944 Miss. LEXIS 271 (Miss. 1944).

City ordinance making it criminal offense to profanely swear or curse or use vulgar or indecent language in public place must be construed in accordance with its purpose, although its letter would admit a narrower interpretation. Nelson v. Natchez, 197 Miss. 26, 19 So. 2d 747, 1944 Miss. LEXIS 271 (Miss. 1944).

Defendant stating while standing in church door after Sunday school, "Well, the 'damn' thing is done broke up," held guilty of "profanity." Orf v. State, 147 Miss. 160, 113 So. 202, 1927 Miss. LEXIS 339 (Miss. 1927).

Evidence held not to sustain charge of using profane language in public highway; criminal statutes not enlarged or extended beyond letter. Cleveland v. State, 129 Miss. 400, 92 So. 555, 1922 Miss. LEXIS 55 (Miss. 1922).

Affidavit charging use of profane language in a public place must allege the particular public place. Files v. State, 96 Miss. 257, 50 So. 979, 1909 Miss. LEXIS 52 (Miss. 1909).

Code 1906, § 1295 is not violated by the use of the words, "Go to hell, you low down devils." Stafford v. State, 91 Miss. 158, 44 So. 801 (Miss. 1907).

An indictment for blasphemy, under Code 1892, § 1219, is demurrable if it fail to designate the particular public place where defendant profanely swore or cursed. State v. Shanks, 88 Miss. 410, 40 So. 1005, 1906 Miss. LEXIS 151 (Miss. 1906).

Under this section [Code 1942, § 2291] it is not necessary to profanity that the name of the Deity be used. State v. Wiley, 76 Miss. 282, 24 So. 194, 1898 Miss. LEXIS 75 (Miss. 1898).

The indictment must set out the profane language used since it constitutes the gist of the offense. Walton v. State, 64 Miss. 207, 8 So. 171, 1886 Miss. LEXIS 44 (Miss. 1886).

2. Public drunkenness.

A defendant's arrest for driving while intoxicated was legal, and therefore the subsequent intoxilyzer test was not tainted, even though the arresting officer did not observe the defendant driving, where the defendant admitted to the arresting officer that he had been driving an automobile which was involved in an accident, and the defendant was publicly intoxicated in the presence of the officer and others in violation of this section. Goforth v. Ridgeland, 603 So. 2d 323, 1992 Miss. LEXIS 348 (Miss. 1992).

Defendant's conviction of being drunk in the presence of two or more persons in a public place was against the weight of the evidence where a doctor, who had examined defendant, testified that the injuries sustained by the defendant prior to his arrest rendered him unable to walk straight and caused him to stagger, and it appeared that opinion of police officers as to defendant's drunkenness was based on defendant's staggering and the odor of alcohol upon him. Brown v. State, 231 Miss. 5, 94 So. 2d 608, 1957 Miss. LEXIS 487 (Miss. 1957).

A highway is public place within meaning of this section [Code 1942, § 2291]. State use of Kelley v. Yearwood, 204 Miss. 181, 37 So. 2d 174, 1948 Miss. LEXIS 353 (Miss. 1948).

Fact that person arrested under this section [Code 1942, § 2291] for public drunkenness was later docketed and tried upon charge of driving while intoxicated does not change lawful nature of original lawful arrest and detention. State use of Kelley v. Yearwood, 204 Miss. 181, 37 So. 2d 174, 1948 Miss. LEXIS 353 (Miss. 1948).

Drunkenness on public highway is drunkenness in public place within statute. Thompson v. State, 153 Miss. 593, 121 So. 275, 1929 Miss. LEXIS 61 (Miss. 1929).

Authority to arrest defendants for drunkenness in public place carried with it authority to search their persons and automobile in which they were riding. Thompson v. State, 153 Miss. 593, 121 So. 275, 1929 Miss. LEXIS 61 (Miss. 1929).

One cannot defend a charge of resisting an officer seeking to arrest him because drunk in a public place, to which he had necessarily been taken on account of his own wrongdoing. Brown v. State, 81 Miss. 137, 32 So. 952, 1902 Miss. LEXIS 134 (Miss. 1902).

OPINIONS OF THE ATTORNEY GENERAL

Double jeopardy does not necessarily prohibit charging a defendant with public drunkenness under this section, even if that defendant has been acquitted of DUI under Section 63-11-30. The two are separate and distinct criminal charges and contain different elements. Moffett, June 6, 1995, A.G. Op. #95-0277.

RESEARCH REFERENCES

ALR.

Location of offense as "public" within requirement of enactments against drunkenness. 8 A.L.R.3d 930.

Proximate cause: liability of tortfeasor for injured person's subsequent injury or reinjury. 31 A.L.R.3d 1000.

Prosecution of chronic alcoholic for drunkenness offenses. 40 A.L.R.3d 321.

Validity of blasphemy statutes or ordinances. 41 A.L.R.3d 519.

Validity and construction of statute or ordinance prohibiting use of "obscene" language in public. 2 A.L.R.4th 1331.

Validity and construction of statutes or ordinances prohibiting profanity or profane swearing or cursing. 5 A.L.R.4th 956.

Civil liability for insulting or abusive language – modern status. 20 A.L.R.4th 773.

Validity and construction of statute or ordinance making it offense to have possession of open or unsealed alcoholic beverage in public place. 39 A.L.R.4th 668.

Am. Jur.

12 Am. Jur. 2d, Blasphemy and Profanity §§ 1 et seq.

50 Am. Jur. 2d, Lewdness, Indecency, and Obscenity § 24.

16 Am. Jur. Proof of Facts 2d 493, Liability for Abusive Language.

CJS.

67 C.J.S., Obscenity § 11.

§ 97-29-49. Prostitution; report to Department of Child Protection Services for suspected child sexual abuse or neglect if minor involved; immunity from prosecution if trafficked person involved.

(1) A person who is eighteen (18) years of age or older commits the misdemeanor of prostitution if the person knowingly or intentionally performs, or offers or agrees to perform, sexual intercourse or sexual conduct for money or other property. "Sexual conduct" includes cunnilingus, fellatio, masturbation of another, anal intercourse or the causing of penetration to any extent and with any object or body part of the genital or anal opening of another.

(2) Any person violating the provisions of this section shall, upon conviction, be punished by a fine not exceeding Two Hundred Dollars ($200.00) or by confinement in the county jail for not more than six (6) months, or both.

(3) In addition to the mandatory reporting provisions contained in Section 97-5-51, any law enforcement officer who encounters a minor under eighteen (18) years of age and has reasonable cause to suspect that the minor has engaged in acts described in this section may take the minor into emergency custody in accordance with the requirements of the Youth Court Act for the purpose of obtaining an order of removal of the minor, and shall contact and make a report to the Department of Child Protection Services as required in Section 43-21-353 for suspected child sexual abuse or neglect, and the department shall commence an initial investigation into suspected child sexual abuse or neglect as required in Section 43-21-353.

(4) If it is determined that a person suspected of or charged with engaging in prostitution is engaging in those acts as a direct result of being a trafficked person, as defined by Section 97-3-54.4, that person shall be immune from prosecution for prostitution as an adult. If the person suspected of engaging in acts that would constitute prostitution is under the age of eighteen (18) the provisions of Section 97-3-54.1(4) shall be applicable.

HISTORY: Codes, 1942, § 2333; Laws, 1942, ch. 284; Laws, 2013, ch. 543, § 10, eff from and after July 1, 2013; Laws, 2019, ch. 420, § 1, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment inserted “who is eighteen (18) years of age or older” in (1); rewrote (3), which read: “In addition to the mandatory reporting provisions contained in Section 97-5-51, any law enforcement officer who takes a minor under eighteen (18) years of age into custody for suspected prostitution shall immediately make a report to the Department of Human Services as required in Section 43-21-353 for suspected child sexual abuse or neglect, and the department shall commence an initial investigation into suspected child sexual abuse or neglect as required in Section 43-21-353”; and divided (4) into two sentences by substituting “immune from prosecution for prostitution as an adult. If the person suspected of engaging in acts that would constitute prostitution is under the age of eighteen (18) the provisions of Section 97-3-54.1(4)” for “immune from prosecution for prostitution as a juvenile or adult and, if a minor, the provisions of Section 97-3-54.1(4).”

Cross References — Enticing children for prostitution, see § 97-5-5.

Presumption that minor taken into custody under this section is victim of human trafficking and commercial sexual exploitation, see § 43-26-3.

JUDICIAL DECISIONS

1. In general.

Omission of words, “from the evidence,” in instruction that all that was required was that jury believe that defendant was guilty beyond a reasonable doubt of having leased or rented a room knowing, or with good reason to know, that it was intended to be used for prostitution, constitutes reversible error, where such defect was not cured by any other instruction. Imbraguglio v. State, 196 Miss. 515, 18 So. 2d 294, 1944 Miss. LEXIS 224 (Miss. 1944).

RESEARCH REFERENCES

ALR.

Validity and construction of statute or ordinance proscribing solicitation for purposes of prostitution, lewdness, or assignation – modern cases. 77 A.L.R.3d 519.

Entrapment defense in sex offense prosecutions. 12 A.L.R.4th 413.

Laws prohibiting or regulating "escort services," "outcall entertainment," or similar services used to carry on prostitution. 15 A.L.R.5th 900.

Am. Jur.

63C Am. Jur. 2d, Prostitution §§ 1 et seq.

24 Am. Jur. Proof of Facts 2d 515, Defense to Charges of Sex Offense.

34 Am. Jur. Trials 1, Representing Sex Offenders and the Chemical Castration Defense.

§ 97-29-51. Prostitution; misdemeanor procuring services of prostitute; felony promoting prostitution; penalties.

(1)(a) A person commits the misdemeanor of procuring the services of a prostitute if the person knowingly or intentionally pays, or offers or agrees to pay, money or other property to another person for having engaged in, or on the understanding that the other person will engage in, sexual intercourse or sexual conduct with the person or with any other person. "Sexual conduct" includes cunnilingus, fellatio, masturbation of another, anal intercourse or the causing of penetration to any extent and with any object or body part of the genital or anal opening of another.

(b) Upon conviction under this subsection, a person shall be punished by a fine not exceeding Two Hundred Dollars ($200.00) or by confinement in the county jail for not more than six (6) months, or both. A second or subsequent violation of this section shall be a felony, punishable by a fine not exceeding One Thousand Dollars ($1,000.00), or by imprisonment in the custody of the Department of Corrections for not more than two (2) years, or both.

(c) However, in all cases, if the person whose services are procured in violation of this subsection (1) is a minor under eighteen (18) years of age, the person convicted shall be guilty of a felony and shall, upon conviction, be punished by imprisonment for not less than five (5) years, nor more than thirty (30) years, or by a fine of not less than Fifty Thousand Dollars ($50,000.00) nor more than Five Hundred Thousand Dollars ($500,000.00), or both.

(d) Consent of a minor is not a defense to prosecution under this subsection (1).

(2)(a) A person commits the felony of promoting prostitution if the person:

(i) Knowingly or intentionally entices, compels, causes, induces, persuades, or encourages by promise, threat, violence, or by scheme or device, another person to become a prostitute;

(ii) Knowingly or intentionally solicits or offers or agrees to solicit, or receives or gives, or agrees to receive or give any money or thing of value for soliciting, or attempting to solicit, another person for the purpose of prostitution;

(iii) Knowingly induces, persuades, or encourages a person to come into or leave this state for the purpose of prostitution;

(iv) Having control over the use of a place or vehicle, knowingly or intentionally permits another person to use the place or vehicle for prostitution;

(v) Accepts, receives, levies or appropriates money or other property of value from a prostitute, without lawful consideration, with knowledge or reasonable cause to know it was earned, in whole or in part, from prostitution; or

(vi) Conducts, directs, takes, or transports, or offers or agrees to take or transport, or aids or assists in transporting, any person to any vehicle, conveyance, place, structure, or building, or to any other person with knowledge or reasonable cause to know that the purpose of such directing, taking or transporting is prostitution.

(b) Upon conviction, a person shall be punished by a fine not exceeding Five Thousand Dollars ($5,000.00) or by imprisonment in the custody of the Department of Corrections for not more than ten (10) years, or both. A second or subsequent violation shall be punished by a fine not exceeding Twenty Thousand Dollars ($20,000.00) or by imprisonment in the custody of the Department of Corrections for up to twenty (20) years, or both.

(c) However, in all cases, if the person whose services are promoted in violation of this subsection (2) is a minor under eighteen (18) years of age, the person convicted shall be guilty of a felony and shall, upon conviction, be punished by imprisonment for not less than five (5) years, nor more than thirty (30) years, or by a fine of not less than Fifty Thousand Dollars ($50,000.00) nor more than Five Hundred Thousand Dollars ($500,000.00), or both. There is no requirement that the defendant have actual knowledge of the age of the person and consent of a minor is not a defense to prosecution under this section.

(3) If it is determined that a person suspected of or charged with promoting prostitution is a trafficked person, as defined by Section 97-3-54.4, that fact shall be considered a mitigating factor in any prosecution of that person for prostitution, and the person shall be referred to appropriate resources for assistance. If it is determined that a person suspected of or charged with promoting prostitution is a minor under eighteen (18) years of age who meets the definition of a trafficked person as defined in Section 97-3-54.4, the minor is immune from prosecution for promoting prostitution as a juvenile or adult and provisions of Section 97-3-54.1(4) shall be applicable.

(4) Any partnership, association, corporation or other entity violating any provision of subsection (2) against the promotion of prostitution shall, upon conviction, be punished by a fine not exceeding Fifty Thousand Dollars ($50,000.00). If the person whose services are promoted is under eighteen (18) years of age, the partnership, association, corporation or other legal entity convicted shall be punished by a fine not exceeding One Million Dollars ($1,000,000.00). There is no requirement that the defendant have knowledge of the age of the person. Consent of a minor is not a defense to prosecution under this section.

(5) Investigation and prosecution of a person, partnership, association, corporation or other entity under this section shall not preclude investigation or prosecution against that person, partnership, association, corporation or other entity for a violation of other applicable criminal laws, including, but not limited to, the Mississippi Human Trafficking Act, Section 97-3-54 et seq.

HISTORY: Codes, 1942, § 2334; Laws, 1942, ch. 284; Laws, 2013, ch. 543, § 11, eff from and after July 1, 2013.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error at the end of (5) by substituting "Mississippi Human Trafficking Act, Section 97-3-54 et seq." for "Mississippi Protection from Human Trafficking Act, Sections 97-3-54 et seq." The Joint Committee ratified the correction at its August 1, 2013, meeting.

Cross References — Enticing children for prostitution, see § 97-5-5.

Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see § 97-43-1 et seq.

RESEARCH REFERENCES

ALR.

Validity and construction of statute or ordinance proscribing solicitation for purposes of prostitution, lewdness, or assignation – modern cases. 77 A.L.R.3d 519.

Separate acts of taking earnings of or support from prostitute as separate or continuing offenses of pimping. 3 A.L.R.4th 1195.

Entrapment defense in sex offense prosecutions. 12 A.L.R.4th 413.

Validity, construction, and application of state statute forbidding unfair trade practice or competition by discriminatory allowance of rebates, commissions, discounts, or the like. 41 A.L.R.4th 675.

Am. Jur.

63C Am. Jur. 2d, Prostitution §§ 17 et seq.

24 Am. Jur. Proof of Facts 2d 515, Defense to Charges of Sex Offense.

§ 97-29-53. Repealed.

Repealed by Laws of 2013, ch. 543, § 12, effective July 1, 2013.

§ 97-29-53. [Codes, 1942, § 2335; Laws, 1942, ch. 284.]

Editor's Notes — Former § 97-29-53 established the penalty for prostitution and solicitation.

§ 97-29-55. Seduction of female over age of eighteen by promised or pretended marriage.

If any person shall obtain carnal knowledge of any woman, or female child, over the age of eighteen years, of previous chaste character, by virtue of any feigned or pretended marriage or any false or feigned promise of marriage, he shall, upon conviction, be imprisoned in the penitentiary not more than five years; but the testimony of the female seduced, alone, shall not be sufficient to warrant a conviction.

HISTORY: Codes, 1892, § 1298; 1906, § 1372; Hemingway's 1917, § 1108; 1930, § 1137; 1942, § 2374; Laws, 1888, p. 89.

Cross References — Unmarried female's action for seduction, see § 11-7-9.

Parent's action for seduction of daughter, see § 11-7-11.

Seduction of female child under 18 years of age, see §§ 97-3-65, 97-3-95, 97-3-101, and 97-5-23.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Jurisdiction and venue.
3. Indictment.
4. Evidence.
5. —Corroborating evidence.

1. In general.

Although consent, either actual or implied, of a female to the act of intercourse is an essential element of the crime of seduction, if the victim ultimately assents or yields to the act of intercourse, the fact that she resisted the advances of her seducer for a time does not preclude the perpetration of criminal seduction. Aldridge v. State, 232 Miss. 368, 99 So. 2d 456, 1958 Miss. LEXIS 283 (Miss. 1958).

One guilty under this section [Code 1942, § 2374] may not exempt himself from prosecution by an offer to marry the woman. Williams v. State, 92 Miss. 70, 45 So. 146, 1907 Miss. LEXIS 8 (Miss. 1907).

Under this section [Code 1942, § 2374], the previous chaste character of the woman is an essential element of the crime. Fooshee v. State, 82 Miss. 509, 34 So. 148, 1903 Miss. LEXIS 141 (Miss. 1903).

Actual chastity and not mere reputation for chastity is required. Carroll v. State, 74 Miss. 688, 22 So. 295, 1897 Miss. LEXIS 76 (Miss. 1897).

2. Jurisdiction and venue.

Where the promise of marriage occurred in Forrest County and the act of intercourse occurred in Jones County, since both of these acts constituted essential elements of the offense of seduction, the jurisdiction thereof was governed by Code 1942, § 2429; and it being proper to begin prosecution in either county, the circuit court of Forrest County had jurisdiction. Aldridge v. State, 232 Miss. 368, 99 So. 2d 456, 1958 Miss. LEXIS 283 (Miss. 1958).

Where the promise of marriage occurred in Forrest County and the act of intercourse occurred in Jones County, since both of these acts constituted essential elements of the offense of seduction, venue could be properly laid in Forrest County without contravening Mississippi Constitution § 26. Aldridge v. State, 232 Miss. 368, 99 So. 2d 456, 1958 Miss. LEXIS 283 (Miss. 1958).

3. Indictment.

It is not necessary under this section [Code 1942, § 2374] that the indictment should aver that the woman is a single woman, this being a matter of defense though it is better practice to so aver. Norton v. State, 72 Miss. 128, 16 So. 264, 1894 Miss. LEXIS 61 (Miss. 1894); Hoff v. State, 83 Miss. 488, 35 So. 950, 1903 Miss. LEXIS 69 (Miss. 1903).

An indictment under this section [Code 1942, § 2374] though failing to allege that the promise was made to the woman is sufficient after verdict, if not demurred to under Code 1892, § 1341 (Code 1906, § 1413), where the indictment does charge that the defendant had knowledge of the woman by virtue of a false or feigned promise of marriage. Norton v. State, 72 Miss. 128, 16 So. 264, 1894 Miss. LEXIS 61 (Miss. 1894).

It is not necessary to allege that the man was unmarried, though if married and the woman knew it, no conviction can be had under this statute [Code 1942, § 2374]. Norton v. State, 72 Miss. 128, 16 So. 264, 1894 Miss. LEXIS 61 (Miss. 1894).

Though not in terms so provided, it is essential to aver and prove under this section [Code 1942, § 2374] that the woman was of chaste character at the time of the intercourse. Norton v. State, 72 Miss. 128, 16 So. 264, 1894 Miss. LEXIS 61 (Miss. 1894).

There need not be positive averment and proof that the woman was unmarried;

it is sufficient that the indictment and evidence reasonably show this. Ferguson v. State, 71 Miss. 805, 15 So. 66, 1894 Miss. LEXIS 43 (Miss. 1894).

4. Evidence.

Since evidence that after the commission of the crime of seduction the accused and the prosecutrix had lived together as man and wife for a number of months informed the jury that subsequent acts of intercourse had been committed, without regard to the question of admissibility of such evidence, the trial court did not commit reversible error in refusing to permit the accused to interrogate the prosecutrix relative thereto as bearing upon the question of the prosecutrix's previous chaste character. Aldridge v. State, 232 Miss. 368, 99 So. 2d 456, 1958 Miss. LEXIS 283 (Miss. 1958).

Testimony of the prosecutrix that she was afraid of the accused and that she had yielded to his demands under the inducement of his promise to marry her, was sufficient to create an issue for the determination of the jury on the question of her consent, and to warrant the jury in finding that while she was reluctant to do so, she yielded to the act of intercourse under the accused's promise to marry her, even though the prosecutrix had testified on cross-examination that the accused had forced himself on her and that she did not consent to the act of intercourse. Aldridge v. State, 232 Miss. 368, 99 So. 2d 456, 1958 Miss. LEXIS 283 (Miss. 1958).

While it is immaterial to the crime of seduction under this section [Code 1942, § 2374] whether the accused be married or unmarried, the fact that he is single is proper to be shown in evidence as illustrating the motive of the woman. Ferguson v. State, 71 Miss. 805, 15 So. 66, 1894 Miss. LEXIS 43 (Miss. 1894).

5. —Corroborating evidence.

Although Mississippi has required by statute that the complaining witness' testimony be corroborated in prosecutions for certain sexual offenses (e.g. Code 1942, §§ 2359, 2374), the state courts have specifically held that the requirement for corroboration is confined to those offenses wherein the statute expressly so provides, and no such corroboration is required in prosecution of defendant for disturbing the peace of the complaining witness, on allegations that the defendant had touched complainant's private parts. Henry v. Williams, 299 F. Supp. 36, 1969 U.S. Dist. LEXIS 8507 (N.D. Miss. 1969).

The requirement that testimony of the outraged female be corroborated does not extend to prosecutions for an indecent assault on a female under 13. Pittman v. State, 236 Miss. 592, 111 So. 2d 415, 1959 Miss. LEXIS 353 (Miss. 1959).

While it is necessary that the prosecutrix be corroborated as to the act of intercourse, and the burden was upon the state to prove this essential element, it was not necessary that this be done by direct evidence, but may be established by circumstantial evidence. Aldridge v. State, 232 Miss. 368, 99 So. 2d 456, 1958 Miss. LEXIS 283 (Miss. 1958).

The fact that the accused and the prosecutrix spent the night together in a private room in a motel was a sufficient circumstance to be submitted to the jury for their determination as to whether the act of intercourse occurred, and to warrant the jury in finding that this was a sufficient corroborative circumstance to establish the fact of intercourse. Aldridge v. State, 232 Miss. 368, 99 So. 2d 456, 1958 Miss. LEXIS 283 (Miss. 1958).

In seduction prosecution, testimony of prosecutrix as to her previous chaste character, the promise of marriage, and the act of seduction must be corroborated. Glover v. State, 117 Miss. 792, 78 So. 769, 1918 Miss. LEXIS 222 (Miss. 1918).

Where there was no corroborating evidence, defendant was entitled to a peremptory instruction. Lewis v. State, 111 Miss. 833, 72 So. 241, 1916 Miss. LEXIS 406 (Miss. 1916).

Letters alleged to have been written by defendant, identified only by the prosecutrix, cannot be regarded as corroborating the witness. Lewis v. State, 111 Miss. 833, 72 So. 241, 1916 Miss. LEXIS 406 (Miss. 1916).

Evidence that defendant, with knowledge of her pregnancy, said that he would marry prosecutrix in a short time, was insufficient corroboration of prosecutrix. Long v. State, 100 Miss. 7, 56 So. 185, 1911 Miss. LEXIS 8 (Miss. 1911).

To convict of seduction, seduced female must be corroborated as to her previous chaste character and the false or feigned promise of marriage. Carter v. State, 99 Miss. 206, 54 So. 805, 1911 Miss. LEXIS 192 (Miss. 1911).

Although under this section [Code 1942, § 2374] the uncorroborated testimony of the woman is insufficient to convict, it is not necessary that she be corroborated in every fact essential to make out the crime; it is sufficient if she be corroborated as to the promise and the intercourse. Ferguson v. State, 71 Miss. 805, 15 So. 66, 1894 Miss. LEXIS 43 (Miss. 1894).

RESEARCH REFERENCES

Am. Jur.

70 Am. Jur. 2d, Seduction §§ 2 et seq.

§ 97-29-57. Stallion or jack not to be kept in public view or permitted to run at large.

A person shall not keep a stallion or jack nearer than one hundred yards to a church, or in public view in an inclosure bordering on a public highway, or nearer thereto, than one hundred yards; nor shall any person stand such animals in open view of any public place, or negligently keep such animal or suffer it to run at large. Any such offender, upon conviction, shall be fined not less than twenty-five dollars, and shall be liable for all damages done by such animals so kept or running at large.

HISTORY: Codes, 1892, § 1220; 1906, § 1296; Hemingway's 1917, § 1029; 1930, § 1060; 1942, § 2292.

§ 97-29-59. Unnatural intercourse.

Every person who shall be convicted of the detestable and abominable crime against nature committed with mankind or with a beast, shall be punished by imprisonment in the penitentiary for a term of not more than ten years.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 7(20); 1857, ch. 64, art. 238; 1871, § 2701; 1880, § 2968; 1892, § 1321; 1906, § 1396; Hemingway's 1917, § 1139; 1930, § 1170; 1942, § 2413.

Cross References — Applicability of certain evidentiary rules in criminal prosecutions for child abuse, see § 13-1-401.

Notification of Department of Education that certificated person has been convicted of sex offense, see § 37-3-51.

Prohibition of person convicted of crimes affecting children or other violent crimes from being licensed as foster parent or a foster home, see § 43-15-6.

Testing for HIV and AIDS of any person convicted under this section, see §§ 99-19-201, 99-19-203.

JUDICIAL DECISIONS

1. In general.

This section, which prohibits unnatural intercourse, is not unconstitutionally vague and overbroad. McDonald v. Department of Human Servs., 636 So. 2d 391, 1994 Miss. LEXIS 196 (Miss. 1994).

Person who attempts to perform anal intercourse on another person but is prevented from doing so when other person flees may be convicted of attempted unnatural intercourse. Haymond v. State, 478 So. 2d 297, 1985 Miss. LEXIS 2269 (Miss. 1985).

Where defendant's 19-year-old daughter testified at trial that she and defendant had engaged in acts of fellatio and cunnilingus, defendant was properly indicted under this section, and not § 97-3-95 et seq., which were enacted subsequent to the violation for which he was convicted, in that § 97-3-103 expressly provides that the sexual battery statutes do not repeal, modify or amend any other criminal statute. Contreras v. State, 445 So. 2d 543, 1984 Miss. LEXIS 1612 (Miss. 1984).

This section is constitutional, notwithstanding defendant's contentions that it discriminated against persons engaged in unnatural sexual intercourse with female children and that the trial judge was given unconstitutionally wide discretion in the range of punishments he could impose. Davis v. State, 367 So. 2d 445, 1979 Miss. LEXIS 2212 (Miss. 1979), limited, Mitchell v. State, 539 So. 2d 1366, 1989 Miss. LEXIS 141 (Miss. 1989).

Statutory phrase "crime against nature" was not so vague as to violate the due process clause since long use of the phrase to characterize various offenses including sodomy, for which the defendant was indicted, gave fair warning of conduct proscribed. State v. Mays, 329 So. 2d 65, 1976 Miss. LEXIS 1819 (Miss.), cert. denied, 429 U.S. 864, 97 S. Ct. 170, 50 L. Ed. 2d 143, 1976 U.S. LEXIS 2939 (U.S. 1976).

A college newspaper run by students and operated with student funds could properly refuse to print an advertisement proferred by a primarily off campus and homosexual group, particularly in light of the statute [this section] proscribing unnatural intercourse, such statute not being unconstitutional, and in light of the fact that university officials had nothing to do with the rejection of the advertisement. Mississippi Gay Alliance v. Goudelock, 536 F.2d 1073, 1976 U.S. App. LEXIS 7593 (5th Cir. Miss. 1976), cert. denied, 430 U.S. 982, 97 S. Ct. 1678, 52 L. Ed. 2d 377, 1977 U.S. LEXIS 1604 (U.S. 1977).

Indictment properly charged the offense of an attempt to commit the crime of sodomy. Taurasi v. State, 233 Miss. 330, 102 So. 2d 120, 1958 Miss. LEXIS 385 (Miss. 1958).

In a prosecution for murder, an instruction to the jury that even if the deceased attempted to have unnatural intercourse with the defendant, but the danger of accomplishment of the crime by the deceased was over and at a time when such danger was not imminent or impending the defendant tied and gagged the deceased, and if the jury finds robbery, then the crime was murder, was proper in presenting defendant's theory of self-defense and the state's theory of felony murder. Burns v. State, 228 Miss. 254, 87 So. 2d 681, 1956 Miss. LEXIS 510 (Miss. 1956).

Sodomy committed per os is punishable under this section. State v. Davis, 223 Miss. 862, 79 So. 2d 452, 1955 Miss. LEXIS 449 (Miss. 1955).

Indictment charging accused with having unnatural carnal intercourse with a woman by sucking her private sexual organs with his mouth failed to show offense of sodomy, since penetration of the body is essential to the offense. State v. Hill, 179 Miss. 732, 176 So. 719, 1937 Miss. LEXIS 76 (Miss. 1937).

RESEARCH REFERENCES

ALR.

Assault with intent to commit unnatural sex act upon minor as affected by latter's consent. 65 A.L.R.2d 748.

Consent as defense in prosecution for sodomy. 58 A.L.R.3d 636.

Propriety of, or prejudicial effect of omitting or of giving, instruction to jury, in prosecution for rape or other sexual offense, as to ease of making or difficulty of defending against such a charge. 92 A.L.R.3d 866.

Validity of statute making sodomy a criminal offense. 20 A.L.R.4th 1009.

Search and seizure: reasonable expectation of privacy in public restroom. 74 A.L.R.4th 508.

Am. Jur.

70A Am. Jur. 2d, Sodomy, §§ 2, 7.

24 Am. Jur. Proof of Facts 2d 515, Defense to Charges of Sex Offense.

CJS.

81A C.J.S., Sodomy §§ 1 et seq.

Law Reviews.

1979 Mississippi Supreme Court Review: Criminal Law and Procedure. 50 Miss. L. J. 763, December 1979.

Comment: Recent amendments to the Mississippi Rules of Evidence – the rights of the victim v. the rights of the accused in child abuse prosecutions and dependency or neglect proceedings. 61 Miss. L. J. 367 (Fall 1991).

1984 Mississippi Supreme Court Review: Criminal Law. 55 Miss L. J. 77, March, 1985.

§ 97-29-61. Voyeurism; trespass by "peeping Tom"; when victim is adult; when victim is child under sixteen.

(1)(a) Any person who enters upon real property, whether the original entry is legal or not, and thereafter pries or peeps through a window or other opening in a dwelling or other building structure for the lewd, licentious and indecent purpose of spying upon the occupants thereof, shall be guilty of a felonious trespass.

(b) Any person who looks through a window, hole or opening, or otherwise views by means of any instrumentality, including, but not limited to, a periscope, telescope, binoculars, drones, camera, motion-picture camera, camcorder or mobile phone, into the interior of a bedroom, bathroom, changing room, fitting room, dressing room, spa, massage room or therapy room or tanning booth, or the interior of any other area in which the occupant has a reasonable expectation of privacy, with the intent to invade the privacy of a person or persons inside and without the consent or knowledge of every person present, for the lewd, licentious and indecent purpose of spying upon the occupant or occupants thereof, shall be guilty of a felony.

(2)(a) Except as provided in paragraph (b) of this subsection, a person who was over the age of twenty-one (21) at the time of the offense who is convicted of a violation of subsection (1) of this section shall be imprisoned in the custody of the Department of Corrections not more than five (5) years.

(b) When one or more occupants spied upon is a child under sixteen (16) years of age, a person who was over the age of twenty-one (21) at the time of the offense who is convicted of a violation of subsection (1) of this section shall be imprisoned in the custody of the Department of Corrections not more than ten (10) years.

HISTORY: Codes, 1942, § 2412.5; Laws, 1958, ch. 281; Laws, 1980, ch. 391; Laws, 2012, ch. 557, § 1; Laws, 2015, ch. 489, § 1, eff from and after July 1, 2015.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Evidence.
3. Sentencing.

1. In general.

Evidence was sufficient for reasonable and fair-minded jurors to find defendant guilty of voyeurism where defendant was seen peeping into an apartment window and ran upon hearing someone approach; having run from a police officer, he was caught with his zipper down, and his car with the keys in it was found on the property. Ledford v. State, 874 So. 2d 995, 2004 Miss. App. LEXIS 170 (Miss. Ct. App.), cert. denied, 882 So. 2d 772, 2004 Miss. LEXIS 1114 (Miss. 2004).

The fact that the accused is a "male person" is an essential or substantive element of the crime proscribed by this section [Code 1942 § 2412.5] which must be charged on the face of the indictment and proved at trial, and indictment failing to refer to or describe the accused as a male person was void. Burchfield v. State, 277 So. 2d 623, 1973 Miss. LEXIS 1421 (Miss. 1973), but see Monk v. State, 532 So. 2d 592, 1988 Miss. LEXIS 501 (Miss. 1988).

The fact that this section [Code 1942, § 2412.5] applies only to persons of the male sex and is inapplicable to females is not, therefore, violative of the equal protection clause of the Fourteenth Amendment, for there exists rational justification for singling out males for punishment under Code 1942, § 2412.5 and the statute does not rest upon an invidious and patently arbitrary sex classification, but has a sound basis in the physical and psychological difference between men and women. Mississippi State Highway Com. v. Cook, 270 So. 2d 695, 1972 Miss. LEXIS 1253 (Miss. 1972).

For evidence sufficient to support a conviction under this section [Code 1942, § 2412. 5]. Thompson v. State, 206 So. 2d 829, 1968 Miss. LEXIS 1584 (Miss. 1968).

On a trial under this section [Code 1942, § 2412.5], evidence of similar acts of peeping on the part of the defendant was admissible to show a common pattern of action. Riley v. State, 254 Miss. 86, 180 So. 2d 321, 1965 Miss. LEXIS 929 (Miss. 1965).

This section [Code 1942, § 2412.5] is constitutional. Brown v. State, 244 Miss. 78, 140 So. 2d 565, 1962 Miss. LEXIS 426 (Miss. 1962).

There was no error in an instruction which followed the law itself and told the jury that it could find defendant guilty if he, at the time and place testified to entered upon the property of another and peeped through the window of the dwelling house of a named person for the lewd, licentious and indecent purpose of spying upon the occupants thereof. Brown v. State, 244 Miss. 78, 140 So. 2d 565, 1962 Miss. LEXIS 426 (Miss. 1962).

2. Evidence.

Court found a factual basis to establish the charges against an inmate for voyeurism under Miss. Code Ann. § 97-29-61 and touching a child for lustful purposes under Miss. Code Ann. § 97-5-23(1), given that (1) the inmate admitted the facts that surrounded the elements for both of the crimes, (2) the inmate's daughter reported the same story to her grandmother and others, and (3) the daughter provided sufficient facts and detail to support the charges. Gaddy v. State, 21 So. 3d 677, 2009 Miss. App. LEXIS 236 (Miss. Ct. App. 2009), cert. denied, 559 U.S. 1078, 130 S. Ct. 2115, 176 L. Ed. 2d 741, 2010 U.S. LEXIS 3422 (U.S. 2010).

3. Sentencing.

Terms of an inmate's sentences were within the statutory limits of Miss. Code Ann. §§ 97-29-61, 97-5-23(1) and thus the claim that the trial court erred in sentencing the inmate to maximum sentences was without merit. Gaddy v. State, 21 So. 3d 677, 2009 Miss. App. LEXIS 236 (Miss. Ct. App. 2009), cert. denied, 559 U.S. 1078, 130 S. Ct. 2115, 176 L. Ed. 2d 741, 2010 U.S. LEXIS 3422 (U.S. 2010).

RESEARCH REFERENCES

ALR.

Eavesdropping as violating right of privacy. 11 A.L.R.3d 1296.

Criminal prosecution of video or photographic voyeurism. 120 A.L.R.5th 337.

Am. Jur.

24 Am. Jur. Proof of Facts 2d 515, Defense to Charges of Sex Offense.

13 Am. Jur. Trials, Defending Minor Felony Cases §§ 1 et seq.

§ 97-29-63. Photographing or filming another without permission where there is expectation of privacy; when victim is adult; when victim is child under sixteen.

(1)(a) It is a felony for any person with lewd, licentious or indecent intent to photograph, film, videotape, record or otherwise reproduces the image of another person without the permission of the other person when the other person is located in a place where a person would intend to be in a state of undress and have a reasonable expectation of privacy, including, but not limited to, private dwellings or any facility, public or private, used as a restroom, bathroom, shower room, tanning booth, locker room, fitting room, dressing room or bedroom shall be guilty of a felony.

(b) It is a felony for any person to invade the privacy of another person and with lewd, licentious or indecent intent to photograph, film, videotape, record or otherwise reproduce the image of another, identifiable person under or through the clothing being worn by that other person for the purpose of viewing the body of, or the undergarments worn by, the other person without the consent or knowledge of the other person and under circumstances in which the other person has a reasonable expectation that the other person's body or undergarments would not be viewed or would not be the subject of a reproduced image.

(2)(a) Except as provided in paragraph (b) of this subsection, a person who was over the age of twenty-one (21) at the time of the offense who is convicted of a violation of subsection (1) of this section shall be punished by a fine of Five Thousand Dollars ($5,000.00) or by imprisonment of not more than five (5) years in the custody of the Department of Corrections, or both.

(b) Where the person who is secretly photographed, filmed, videotaped or otherwise reproduced is a child under sixteen (16) years of age, a person who was over the age of twenty-one (21) at the time of the offense who is convicted of a violation of subsection (1) of this section shall be punished by a fine of Five Thousand Dollars ($5,000.00) or by imprisonment of not more than ten (10) years in the custody of the Department of Corrections, or both.

HISTORY: Laws, 1999, ch. 514, § 2; Laws, 2012, ch. 557, § 2; Laws, 2015, ch. 489, § 2, eff from and after July 1, 2015.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

JUDICIAL DECISIONS

ANALYSIS

1. Rulings on evidence.
2. Venue.
3. Statute of limitations.
4. Instructions.
5. Indictment.

1. Rulings on evidence.

Despite not being allowed to show the investigator an example from his laptop and software, defendant was still able to cross-examine the investigator regarding the date that the internet protocol address of the subject laptop was assigned to defendant, and there was no error in this regard. Donaldson v. State, 262 So. 3d 1135, 2018 Miss. App. LEXIS 303 (Miss. Ct. App. 2018), cert. denied, 260 So. 3d 800, 2019 Miss. LEXIS 59 (Miss. 2019).

Defendant questioned the investigators regarding the documents in question and was not deprived of a meaningful opportunity to present his defense. Donaldson v. State, 262 So. 3d 1135, 2018 Miss. App. LEXIS 303 (Miss. Ct. App. 2018), cert. denied, 260 So. 3d 800, 2019 Miss. LEXIS 59 (Miss. 2019).

In defendant's trial for unlawfully filming another person, the tape that the victim found, State's Exhibit 8, was not given to defendant by the State, however, the victim's personal attorney had provided defendant with a copy of that tape, and it was similar but not identical to Exhibit 14 (the second tape provided by the State), thus, if there was a discovery violation, it was harmless. Moen v. State, 861 So. 2d 1066, 2003 Miss. App. LEXIS 1187 (Miss. Ct. App. 2003).

2. Venue.

Defendant's video-voyeurism convictions were reversed because venue was not proved, as (1) the parties' stipulation of facts, which was the sole trial evidence, was silent on where defendant's transfers of prohibited filming within the statute of limitations occurred, (2) defendant's residence in a certain county did not prove venue, (3) the constitutional issue could be raised initially on appeal, and (4) defendant did not admit the stipulation provided sufficient evidence for a conviction, nor did defendant try to plead guilty. Nuckolls v. State, 179 So. 3d 1046, 2015 Miss. LEXIS 586 (Miss. 2015).

3. Statute of limitations.

Because documents were cumulative to the files defendant had already presented, the trial court did not abuse its discretion in excluding the documents. Donaldson v. State, 262 So. 3d 1135, 2018 Miss. App. LEXIS 303 (Miss. Ct. App. 2018), cert. denied, 260 So. 3d 800, 2019 Miss. LEXIS 59 (Miss. 2019).

Jury could have found that defendant recorded the video of the minor victim on October 28, 2011, well within two years of his arrest date of November 4, 2011, and thus the trial court did not err in denying defendant's motion for a directed verdict after the State's case-in-chief for filming a person in violation of their expectation of privacy; the creation date of the video by defendant in his bathroom was October 28, 2011, and the victim testified that she did not know of any video ever being made. Donaldson v. State, 262 So. 3d 1135, 2018 Miss. App. LEXIS 303 (Miss. Ct. App. 2018), cert. denied, 260 So. 3d 800, 2019 Miss. LEXIS 59 (Miss. 2019).

State proved one count of video-voyeurism occurred within the statute of limitations because the parties stipulated the count's video showed defendant possessing a computer defendant bought within the limitations period. Nuckolls v. State, 179 So. 3d 1046, 2015 Miss. LEXIS 586 (Miss. 2015).

4. Instructions.

Although the jury instruction omitted the word intent, the instruction still properly described the type of intent required under the statute, plus the instructions as a whole fairly announced the law and therefore cured any error caused by the omission of the word; furthermore, during closing arguments, defense counsel argued that the State had to prove that defendant filmed the victim with lewd, licentious, and indecent intent, and no error was found. Donaldson v. State, 262 So. 3d 1135, 2018 Miss. App. LEXIS 303

(Miss. Ct. App. 2018), cert. denied, 260 So. 3d 800, 2019 Miss. LEXIS 59 (Miss. 2019).

5. Indictment.

Trial court properly considered the appropriate factors before denying defendant's motion to sever the two counts of the indictment; even in separate trials, the evidence would be admissible to prove the other count. Donaldson v. State, 262 So. 3d 1135, 2018 Miss. App. LEXIS 303 (Miss. Ct. App. 2018), cert. denied, 260 So. 3d 800, 2019 Miss. LEXIS 59 (Miss. 2019).

OPINIONS OF THE ATTORNEY GENERAL

A violation of § 97-23-63, which prohibits photographing or filming another without permission where there is an expectation of privacy, is not a "sex crime" for the purpose of determining eligibility for parole or the intensive supervision program. Johnson, June 14, 2002, A.G. Op. #02-0336.

§ 97-29-65. Strip clubs prohibited within one-fourth mile of church, school, kindergarten, or courthouse.

It shall be unlawful to locate within one-fourth (¼) of one (1) mile of any church, school, kindergarten or courthouse any establishment where public displays of nudity are present. Any person found guilty of violating this section shall, upon conviction, be fined not more than Ten Thousand Dollars ($10,000.00) or imprisoned for not more than one (1) year, or both.

For the purposes of this section the term "nudity" and "public display" shall have the same meanings as those terms are defined in Section 19-5-103.

HISTORY: Laws, 2000, ch. 558, § 1, eff from and after July 1, 2000.

OBSCENE MATERIALS, PERFORMANCES AND DEVICES

Sec.	
97-29-101.	Distribution or wholesale distribution of obscene materials or performances; character and reputation as evidence; prosecutor's bond.
97-29-103.	Definitions.
97-29-105.	Distribution or wholesale distribution of unlawful sexual devices; prosecutor's bond.
97-29-107.	Exemptions from application of Sections 97-29-101 through 97-29-109; procedure for claiming exemption; defenses.
97-29-109.	Penalties.

§ 97-29-101. Distribution or wholesale distribution of obscene materials or performances; character and reputation as evidence; prosecutor's bond.

A person commits the offense of distributing obscene materials or obscene performances when he sells, rents, leases, advertises, publishes or exhibits to any person any obscene material or obscene performance of any description knowing the obscene nature thereof, or offers to do so, or possesses such material with the intent to do so. A person commits the offense of wholesale distributing obscene materials or obscene performances when he distributes for the purpose of resale any obscene material or obscene performance of any description knowing the obscene nature thereof, or offers to do so, or possesses such material with the intent to do so. The word "knowing" as used in this section means either actual or constructive knowledge of the obscene contents of the subject matter, and a person has constructive knowledge of the obscene contents if he has knowledge of facts which would put a reasonable and prudent person on notice as to the suspect nature of the material. The character and reputation of an individual charged with an offense under Sections 97-29-101 through 97-29-109 and, if a commercial dissemination of obscene material or an obscene performance is involved, the character and reputation of the business establishment involved, may be placed in evidence by the defendant on the question of intent to violate Sections 97-29-101 through 97-29-109.

Any person, other than a city attorney, county prosecuting attorney or district attorney, who shall sign an affidavit charging an offense prescribed by this section shall file a bond in the amount of five hundred dollars ($500.00) at the time such affidavit is lodged. Such bond shall be conditioned that the affidavit was not filed frivolously, maliciously or out of ill will.

HISTORY: Laws, 1983, ch. 498, § 1, eff from and after July 1, 1983.

Cross References — Exemptions from application of §§ 97-29-101 through 97-29-109, see § 97-29-107.

Penalties for violations of this section, see § 97-29-109.

JUDICIAL DECISIONS

ANALYSIS

I. UNDER CURRENT LAW.

1. In general.
2.-10. [Reserved for future use.]

II. UNDER FORMER § 97-29-33.

11. Validity.
12. Construction and application.

I. UNDER CURRENT LAW.

1. In general.

Producers of child pornography may be convicted under Federal Protection of Children Against Sexual Exploitation Act of 1977, which prohibits interstate transportation, shipment, distribution, receipt, or reproduction of visual depictions of minors engaged in sexually explicit conduct, without proof that producers had actual knowledge of fact that performer was a minor. United States v. X-Citement Video, 513 U.S. 64, 115 S. Ct. 464, 130 L. Ed. 2d 372, 1994 U.S. LEXIS 8601 (U.S. 1994).

2.-10. [Reserved for future use.]

II. UNDER FORMER § 97-29-33.

11. Validity.

This section's definition of "obscene, indecent, or immoral" was overbroad and violated the First Amendment to the United States Constitution according to the requirement set by the United States Supreme Court, and it could not be made constitutional by construing it and applying it or by reading into it the specificity and limitations required by the Supreme Court. ABC Interstate Theatres, Inc. v. State, 325 So. 2d 123, 1976 Miss. LEXIS 1975 (Miss. 1976).

Decision stating that this section [Code 1942, § 2286] is not unconstitutional on its face or as applied would be vacated and remanded for reconsideration in light of recent U.S. Supreme Court decisions concerning obscenity. Hosey v. Jackson, 401 U.S. 987, 91 S. Ct. 1221, 28 L. Ed. 2d 525, 1971 U.S. LEXIS 2573 (U.S. 1971).

Decision stating that a criminal obscenity statute to be valid does not have to precisely describe the crime, and incorporate all of the judicial tests for proper determination as to the guilt, or innocence, of the offense, for such is not the office or function of the criminal statute which simply must impart sufficient notice or warning of the crime to accord the offender, as a reasonable person, an opportunity to avoid its commission would be vacated and remanded for reconsideration in light of recent U.S. Supreme Court decisions concerning obscenity. McGrew v. Jackson, 401 U.S. 987, 91 S. Ct. 1221, 28 L. Ed. 2d 525, 1971 U.S. LEXIS 2572 (U.S. 1971).

Decision stating that obscenity is not within the protection of the First Amendment to the United States Constitution under all of the authorities would be vacated and remanded for reconsideration in light of U.S. Supreme Curt decisions concerning obscenity. McGrew v. Jackson, 401 U.S. 987, 91 S. Ct. 1221, 28 L. Ed. 2d 525, 1971 U.S. LEXIS 2572 (U.S. 1971).

12. Construction and application.

Decision stating that the absence of a requirement of scienter in this section [Code 1942, § 2286] is inapplicable to motion pictures would be vacated and remanded for reconsideration in light of recent U.S. Supreme Court decisions concerning obscenity. Hosey v. Jackson, 401 U.S. 987, 91 S. Ct. 1221, 28 L. Ed. 2d 525, 1971 U.S. LEXIS 2573 (U.S. 1971).

Decision stating that it is neither possible nor is it the function of a criminal statute to set out all the judicial tests for a proper determination of whether a violation of the statute has been committed; all that is required is that the statute give adequate notice and warning of what is prohibited in order that one may avoid such conduct, and this was done by Code 1942, § 2286 would be vacated and remanded for reconsideration in light of recent U.S. Supreme Court decisions concerning obscenity. Hosey v. Jackson, 401 U.S. 987, 91 S. Ct. 1221, 28 L. Ed. 2d 525, 1971 U.S. LEXIS 2573 (U.S. 1971).

Decision stating that in view of the standards requiring that the dominant theme of the material taken as a whole appeals to prurient interest, it is necessary that arresting officers view an allegedly obscene film in its entirety before the commission of this offense in their presence can be validly established, and the viewing of portions or isolated excerpts of the film is not sufficient would be vacated and remanded for reconsideration in light of recent U.S. Supreme Court decisions concerning obscenity. Hosey v. Jackson, 401 U.S. 987, 91 S. Ct. 1221, 28 L. Ed. 2d 525, 1971 U.S. LEXIS 2573 (U.S. 1971).

Decision stating that the seizure of an allegedly obscene film as an incident to lawful arrests for a crime committed in the presence of the arresting officers (the public showing of such film) does not exceed constitutional bounds in the absence of a private judicial hearing on the question of obscenity would be vacated and remanded for reconsideration in light of recent U.S. Supreme Court decisions concerning obscenity. Hosey v. Jackson, 401 U.S. 987, 91 S. Ct. 1221, 28 L. Ed. 2d 525, 1971 U.S. LEXIS 2573 (U.S. 1971).

Decision stating that under rules announced by the United States Supreme Court governing a decision in obscenity cases, this section [Code 1942, § 2286] cannot be justly said to be vague or overbroad would be vacated and remanded for reconsideration in light of recent U.S. Supreme Court decisions concerning obscenity. McGrew v. Jackson, 401 U.S. 987, 91 S. Ct. 1221, 28 L. Ed. 2d 525, 1971 U.S. LEXIS 2572 (U.S. 1971).

Decision stating that motion picture film which is a dull and offensive presentation of the illicit love life of two unmarried females and an unmarried male which, by the application of contemporary community standards, has a dominant theme which, taken as a whole, appeals to the prurient interest in sex and is patently offensive because it affronts contemporary community standards relating to the representation of sexual matters, and is utterly without redeeming social value would be vacated and remanded for reconsideration in light of recent U.S. Supreme Court decisions concerning obscenity. McGrew v. Jackson, 401 U.S. 987, 91 S. Ct. 1221, 28 L. Ed. 2d 525, 1971 U.S. LEXIS 2572 (U.S. 1971).

In a suit to enjoin a showing of a motion picture, where the bill did not charge a nuisance nor violation of a statute prescribing exhibition of obscene, indecent, or immoral pictures, the issuance of injunction would not be granted. Forman ex rel. District Attorney v. Oberlin, 222 Miss. 42, 75 So. 2d 56, 1954 Miss. LEXIS 616 (Miss. 1954).

Statutes making unlawful exhibition of "obscene, indecent, or immoral picture" strictly construed. Anderson v. Hattiesburg, 131 Miss. 216, 94 So. 163, 1922 Miss. LEXIS 264 (Miss. 1922).

RESEARCH REFERENCES

ALR.

Entrapment to commit offense against obscenity laws. 77 A.L.R.2d 792.

Modern concept of obscenity. 5 A.L.R.3d 1158.

Validity of procedures designed to protect the public against obscenity. 5 A.L.R.3d 1214.

Validity and construction of federal statutes (18 USC Secs. 1463, 1718) which declare nonmailable matter, otherwise mailable, because of what appears upon envelope, outside cover, wrapper, or on postal card. 11 A.L.R.3d 1276.

Operation of nude-model photographic studio as offense. 48 A.L.R.3d 1313.

Topless or bottomless dancing or similar conduct as offense. 49 A.L.R.3d 1084.

Exhibition of obscene motion pictures as nuisance. 50 A.L.R.3d 969.

Pornoshops or similar places disseminating obscene materials as nuisance. 58 A.L.R.3d 1134.

Validity, construction, and effect of statutes or ordinances prohibiting the sale of obscene materials to minors. 93 A.L.R.3d 297.

What constitutes "public place" within meaning of statutes prohibiting commission of sexual act in public place. 96 A.L.R.3d 692.

Validity and construction of statute or ordinance prohibiting use of "obscene" language in public. 2 A.L.R.4th 1331.

In personam or territorial jurisdiction of state court in connection with obscenity prosecution of author, actor, photographer, publisher, distributor, or other party whose acts were performed outside the state. 16 A.L.R.4th 1318.

Processor's right to refuse to process or return film or video tape of obscene subject. 18 A.L.R.4th 1326.

Validity, construction, and application of statutes or ordinances regulating sexual performance by child. 21 A.L.R.4th 239.

Obscenity prosecutions: statutory exemption based on dissemination to persons or entities having scientific, educational, or similar justification for possession of such materials. 13 A.L.R.5th 567.

Admissibility of evidence of public-opinion polls or surveys in obscenity prosecution on issue whether materials in question are obscene. 59 A.L.R.5th 749.

Constitutionality of state statutes banning distribution of sexual devices. 94 A.L.R.5th 497.

Advertisements; validity, construction and application of provisions of Postal Reorganization Act of 1970 (18 USCS §§ 1735-1737; 39 USCS §§ 3010, 3011) (so-called "Goldwater Amendment") prohibiting mailing of sexually oriented advertisements to persons who have notified Postal Service that they wish to receive no such material. 15 A.L.R. Fed. 488.

Validity, construction, and application of Federal criminal statute (18 USCS § 1464) punishing utterance of obscene, indecent, or profane language by means of radio communication. 17 A.L.R. Fed. 900.

Am. Jur.

50 Am. Jur. 2d, Lewdness, Indecency, and Obscenity §§ 1, 2, 16.

18 Am. Jur. Proof of Facts, Obscenity in Motion Pictures §§ 60 et seq.

24 Am. Jur. Proof of Facts 2d 515, Defense to Charges of Sex Offense.

10 Am. Jur. Trials, Obscenity Litigation §§ 1 et seq.

CJS.

67 C.J.S., Obscenity §§ 1 et seq.

§ 97-29-103. Definitions.

(1) Material or performance is obscene if:

(a) To the average person, applying contemporary community standards, taken as a whole, it appeals to the prurient interest, that is, a lustful, erotic, shameful, or morbid interest in nudity, sex or excretion; and

(b) The material taken as a whole lacks serious literary, artistic, political or scientific value; and

(c) The material depicts or describes in a patently offensive way, sexual conduct specifically defined in subparagraphs (i) through (v) below:

(i) Acts of sexual intercourse, heterosexual or homosexual, normal or perverted, actual or simulated;

(ii) Acts of masturbation;

(iii) Acts involving excretory functions or lewd exhibition of the genitals;

(iv) Acts of bestiality or the fondling of sex organs of animals; or

(v) Sexual acts of flagellation, torture or other violence indicating a sadomasochistic sexual relationship.

(2) Undeveloped photographs, molds, printing plates and the like shall be deemed obscene material, notwithstanding that processing or other acts may be required to make the obscenity patent or to distribute it.

(3) "Performance" means a play, motion picture, dance or other exhibition performed before an audience.

(4) "Patently offensive" means so offensive on its face as to affront current community standards of decency.

(5) "Wholesale distributes" means to distribute for the purpose of resale.

(6) "Material" means any book, magazine, newspaper, advertisement, pamphlet, poster, print, picture, figure, image, drawing, description, motion picture film, phonographic record, recording tape, video tape, or other tangible thing producing, reproducing or capable of producing or reproducing an image, picture, sound or sensation through sight, sound or touch, but it does not include an actual three-dimensional sexual device as defined in Section 97-29-105.

HISTORY: Laws, 1983, ch. 498, § 2, eff from and after July 1, 1983.

JUDICIAL DECISIONS

ANALYSIS

I. UNDER CURRENT LAW.
1.-10. [Reserved for future use.]
II. UNDER FORMER LAW.
11. Former § 97-29-33.

I. UNDER CURRENT LAW.

1.-10. [Reserved for future use.]

II. UNDER FORMER LAW.

11. Former § 97-29-33.

The words "all you ladies that smoke

cigarettes throw your butts in here," painted on the hood of an automobile, left in a public place, are within the prohibition of the statute, notwithstanding that the statute deals primarily with obscene or indecent literature, the question whether such language, as it would be commonly understood or interpreted, was such as to offend the public sense of real decency as distinguished from mere prudery, being for the jury, and the fact that the language may have been employed in the manner of a jest does not, under such public circumstances, alter the case. City of Pascagoula v. Nolan, 183 Miss. 164, 184 So. 165, 1938 Miss. LEXIS 229 (Miss. 1938).

Law denouncing sale of obscene literature not denial of freedom of press. Williams v. State, 130 Miss. 827, 94 So. 882, 1922 Miss. LEXIS 245 (Miss. 1922).

RESEARCH REFERENCES

ALR.

Modern concept of obscenity. 5 A.L.R.3d 1158.

Validity of procedures designed to protect the public against obscenity. 5 A.L.R.3d 1214.

Validity and construction of federal statutes (18 USCS Secs. 1463, 1718) which declare nonmailable matter, otherwise mailable, because of what appears upon envelope, outside cover, wrapper, or on postal card. 11 A.L.R.3d 1276.

Operation of nude-model photographic studio as offense. 48 A.L.R.3d 1313.

Topless or bottomless dancing or similar conduct as offense. 49 A.L.R.3d 1084.

Exhibition of obscene motion pictures as nuisance. 50 A.L.R.3d 969.

Pornoshops or similar places disseminating obscene materials as nuisance. 58 A.L.R.3d 1134.

Validity, construction, and effect of statutes or ordinances prohibiting the sale of obscene materials to minors. 93 A.L.R.3d 297.

What constitutes "public place" within meaning of statutes prohibiting commission of sexual act in public place. 96 A.L.R.3d 692.

Validity and construction of statute or ordinance prohibiting use of "obscene" language in public. 2 A.L.R.4th 1331.

In personam or territorial jurisdiction of state court in connection with obscenity prosecution of author, actor, photographer, publisher, distributor, or other party whose acts were performed outside the state. 16 A.L.R.4th 1318.

Validity, construction, and application of statutes or ordinances regulating sexual performance by child. 21 A.L.R.4th 239.

Musical sound recording as punishable obscenity. 30 A.L.R.5th 718.

Admissibility of evidence of public-opinion polls or surveys in obscenity prosecution on issue whether materials in question are obscene. 59 A.L.R.5th 749.

Advertisements; validity, construction and application of provisions of Postal Reorganization Act of 1970 (18 USCS §§ 1735-1737; 39 USCS §§ 3010, 3011) (so-called "Goldwater Amendment") prohibiting mailing of sexually oriented advertisements to persons who have notified Postal Service that they wish to receive no such material. 15 A.L.R. Fed. 488.

Validity, construction, and application of Federal criminal statute (18 USCS § 1464) punishing utterance of obscene, indecent, or profane language by means of radio communication. 17 A.L.R. Fed. 900.

Immoral or obscene materials as subject to copyright protection. 50 A.L.R. Fed. 805.

Am. Jur.

50 Am. Jur. 2d, Lewdness, Indecency, and Obscenity §§ 1, 2, 16.

18 Am. Jur. Proof of Facts, Obscenity in Motion Pictures, §§ 60 et seq.

24 Am. Jur. Proof of Facts 2d 515, Defense to Charges of Sex Offense.

10 Am. Jur. Trials, Obscenity Litigation §§ 1 et seq.

CJS.

67 C.J.S., Obscenity §§ 1 et seq.

§ 97-29-105. Distribution or wholesale distribution of unlawful sexual devices; prosecutor's bond.

A person commits the offense of distributing unlawful sexual devices when he knowingly sells, advertises, publishes or exhibits to any person any three-dimensional device designed or marketed as useful primarily for the stimulation of human genital organs, or offers to do so, or possesses such devices with the intent to do so. A person commits the offense of wholesale distributing unlawful sexual devices when he distributes for the purpose of resale any three-dimensional device designed or marketed as useful primarily for the stimulation of human genital organs, or offers to do so, or possesses such devices with the intent to do so.

Any person, other than a city attorney, county prosecuting attorney or district attorney, who shall sign an affidavit charging an offense prescribed by this section shall file a bond in the amount of five hundred dollars ($500.00) at the time such affidavit is lodged. Such bond shall be conditioned that the affidavit was not filed frivolously, maliciously or out of ill will.

HISTORY: Laws, 1983, ch. 498, § 3, eff from and after July 1, 1983.

Cross References — Exemptions from application of §§ 97-29-101 through 97-29-109, see § 97-29-107.

Sexual devices not being included in definition of "material," see § 97-29-103.

Penalties for violations of this section, see § 97-29-109.

JUDICIAL DECISIONS

1. Constitutionality.

Sale of sexual devices, or the right of access to such devices by users, is not encompassed by the constitutionally protected right of privacy; advertising of the devices or their sale is not constitutionally protected speech. PHE, Inc. v. State, 877 So. 2d 1244, 2004 Miss. LEXIS 269 (Miss. 2004).

RESEARCH REFERENCES

ALR.

Modern concept of obscenity. 5 A.L.R.3d 1158.

Validity of procedures designed to protect the public against obscenity. 5 A.L.R.3d 1214.

Validity and construction of federal statutes (18 USC Secs. 1463, 1718) which declare nonmailable matter, otherwise mailable, because of what appears upon envelope, outside cover, wrapper, or on postal card. 11 A.L.R.3d 1276.

Operation of nude-model photographic studio as offense. 48 A.L.R.3d 1313.

Topless or bottomless dancing or similar conduct as offense. 49 A.L.R.3d 1084.

Exhibition of obscene motion pictures as nuisance. 50 A.L.R.3d 969.

Pornoshops or similar places disseminating obscene materials as nuisance. 58 A.L.R.3d 1134.

Validity, construction, and effect of statutes or ordinances prohibiting the sale of obscene materials to minors. 93 A.L.R.3d 297.

What constitutes "public place" within meaning of statutes prohibiting commission of sexual act in public place. 96 A.L.R.3d 692.

Validity and construction of statute or ordinance prohibiting use of "obscene" language in public. 2 A.L.R.4th 1331.

In personam or territorial jurisdiction of state court in connection with obscenity prosecution of author, actor, photographer, publisher, distributor, or other party whose acts were performed outside the state. 16 A.L.R.4th 1318.

Validity, construction, and application of statutes or ordinances regulating sexual performance by child. 21 A.L.R.4th 239.

Advertisements; validity, construction and application of provisions of Postal Reorganization Act of 1970 (18 USCS §§ 1735-1737; 39 USCS §§ 3010, 3011) (so-called "Goldwater Amendment") prohibiting mailing of sexually oriented advertisements to persons who have notified Postal Service that they wish to receive no such material. 15 A.L.R. Fed. 488.

Validity, construction, and application of Federal criminal statute (18 USCS § 1464) punishing utterance of obscene, indecent, or profane language by means of radio communication. 17 A.L.R. Fed. 900.

Am. Jur.

50 Am. Jur. 2d, Lewdness, Indecency, and Obscenity §§ 1, 2, 16.

18 Am. Jur. Proof of Facts, Obscenity in Motion Pictures, §§ 60 et seq.

24 Am. Jur. Proof of Facts 2d 515, Defense to Charges of Sex Offense.

10 Am. Jur. Trials, Obscenity Litigation §§ 1 et seq.

CJS.

67 C.J.S., Obscenity §§ 1 et seq.

§ 97-29-107. Exemptions from application of Sections 97-29-101 through 97-29-109; procedure for claiming exemption; defenses.

(1) Sections 97-29-101 through 97-29-109 shall not apply when the distribution or wholesale distribution of the material, performance or device was made by:

(a) A person, corporation, company, partnership, firm, association, business, establishment or other legal entity to a person associated with an institution of higher learning, either as a member of the faculty or as a matriculated student, teaching or pursuing a course of study related to such material, performance or device;

(b) A licensed physician or a licensed psychologist to a person whose receipt of such material or device was authorized in writing by such physician or psychologist in the course of medical or psychological treatment or care;

(c) A person who while acting in his capacity as an employee is employed on a full-time or part-time basis by (i) any recognized historical society or museum accorded charitable status by the federal government; (ii) any state, county or municipal public library; or (iii) any library of any public or private school, college or university in this state; or

(d) A community television antenna services system or a cable television system operating pursuant to a written agreement not in conflict with this paragraph granted by a county, municipality or other political subdivision of this state, or by an employee of such system while acting within the scope of his employment, when the signal transmitting the material or performance originates outside of the state of Mississippi.

(2) Any exemption from prosecution claimed under the provisions of this section may be raised at a pretrial hearing by motion, and the court shall determine whether sufficient evidence exists to constitute an exemption from

prosecution under the provisions of Sections 97-29-101 through 97-29-109. If the motion is sustained, the case shall be dismissed; provided, however, if the motion is not sustained then the defendant may offer into evidence at trial as an affirmative defense to conviction under Sections 97-29-101 through 97-29-109 any matter which could have been raised by the defendant in the motion to dismiss.

HISTORY: Laws, 1983, ch. 498, § 4, eff from and after July 1, 1983.

JUDICIAL DECISIONS

1. Sale of sexual devices.

Sale of sexual devices, or the right of access to such devices by users, is not encompassed by the right of privacy; advertising of the devices or their sale is not constitutionally protected speech. Novelty and gag gifts sold by vendors were not sexual devices. PHE, Inc. v. State, 877 So. 2d 1244, 2004 Miss. LEXIS 269 (Miss. 2004).

RESEARCH REFERENCES

ALR.

Modern concept of obscenity. 5 A.L.R.3d 1158.

Validity of procedures designed to protect the public against obscenity. 5 A.L.R.3d 1214.

Validity and construction of Federal statutes (18 USC secs. 1463, 1718) which declare nonmailable matter, otherwise mailable, because of what appears upon envelope, outside cover, wrapper, or on postal card. 11 A.L.R.3d 1276.

Operation of nude-model photographic studio as offense. 48 A.L.R.3d 1313.

Topless or bottomless dancing or similar conduct as offense. 49 A.L.R.3d 1084.

Exhibition of obscene motion pictures as nuisance. 50 A.L.R.3d 969.

Pornoshops or similar places disseminating obscene materials as nuisance. 58 A.L.R.3d 1134.

Validity, construction, and effect of statutes or ordinances prohibiting the sale of obscene materials to minors. 93 A.L.R.3d 297.

What constitutes "public place" within meaning of statutes prohibiting commission of sexual act in public place. 96 A.L.R.3d 692.

Validity and construction of statute or ordinance prohibiting use of "obscene" language in public. 2 A.L.R.4th 1331.

In personam or territorial jurisdiction of state court in connection with obscenity prosecution of author, actor, photographer, publisher, distributor, or other party whose acts were performed outside the state. 16 A.L.R.4th 1318.

Validity, construction, and application of statutes or ordinances regulating sexual performance by child. 21 A.L.R.4th 239.

Obscenity prosecutions: statutory exemption based on dissemination to persons or entities having scientific, educational, or similar justification for possession of such materials. 13 A.L.R.5th 567.

Advertisements; validity, construction and application of provisions of Postal Reorganization Act of 1970 (18 USCS §§ 1735-1737; 39 USCS §§ 3010, 3011) (so-called "Goldwater Amendment") prohibiting mailing of sexually oriented advertisements to persons who have notified Postal Service that they wish to receive no such material. 15 A.L.R. Fed. 488.

Validity, construction, and application of Federal criminal statute (18 USCS § 1464) punishing utterance of obscene, indecent, or profane language by means of radio communication. 17 A.L.R. Fed. 900.

Am. Jur.

50 Am. Jur. 2d, Lewdness, Indecency, and Obscenity §§ 1, 2, 16.

18 Am. Jur. Proof of Facts, Obscenity in Motion Pictures, §§ 60 et seq.

24 Am. Jur. Proof of Facts 2d 515, Defense to Charges of Sex Offense.

10 Am. Jur. Trials, Obscenity Litigation §§ 1 et seq.

§ 97-29-109. Penalties.

Any person, except one who wholesale distributes, who violates Section 97-29-101 or Section 97-29-105 shall be guilty of a misdemeanor and, upon conviction, shall, in the case of the first offense, be fined not more than five thousand dollars ($5,000.00) or imprisoned in the county jail for a term not to exceed six (6) months, or both. If the person has been previously convicted of a violation of Section 97-29-101 or Section 97-29-105 or of Section 97-5-27 or 97-5-29, Mississippi Code of 1972, then the person shall be fined not less than two thousand five hundred dollars ($2,500.00) nor more than ten thousand dollars ($10,000.00) or imprisoned for a term not to exceed one (1) year, or both.

Any person who wholesale distributes in violation of Section 97-29-101 or Section 97-29-105 shall, upon conviction, be fined not more than ten thousand dollars ($10,000.00) or imprisoned for a term not to exceed one (1) year, or both. If the person has been previously convicted of a violation of Section 97-29-101 or Section 97-29-105 or of Section 97-5-27 or 97-5-29, Mississippi Code of 1972, then the person shall, upon conviction, be fined not less than two thousand five hundred dollars ($2,500.00) nor more than fifty thousand dollars ($50,000.00) or imprisoned for a term not to exceed one (1) year, or both.

A corporation, company, partnership, firm, association, business, establishment, organization or other legal entity other than an individual convicted of distributing obscenity or unlawful sexual devices or wholesale distribution of obscenity or unlawful sexual devices shall be fined not less than one thousand dollars ($1,000.00) nor more than ten thousand dollars ($10,000.00). If such legal entity has been previously convicted of distributing obscenity or unlawful sexual devices or wholesale distribution of obscenity or unlawful sexual devices or of a violation of Section 97-5-27 or Section 97-5-29, Mississippi Code of 1972, then such legal entity shall be fined not less than five thousand dollars ($5,000.00) nor more than fifty thousand dollars ($50,000.00).

HISTORY: Laws, 1983, ch. 498, § 5, eff from and after July 1, 1983.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

ALR.

Modern concept of obscenity. 5 A.L.R.3d 1158.

Validity of procedures designed to protect the public against obscenity. 5 A.L.R.3d 1214.

Validity and construction of Federal statutes (18 USCS secs. 1463, 1718) which declare nonmailable matter, otherwise mailable, because of what appears upon envelope, outside cover, wrapper, or on postal card. 11 A.L.R.3d 1276.

Operation of nude-model photographic studio as offense. 48 A.L.R.3d 1313.

Topless or bottomless dancing or similar conduct as offense. 49 A.L.R.3d 1084.

Exhibition of obscene motion pictures as nuisance. 50 A.L.R.3d 969.

Pornoshops or similar places disseminating obscene materials as nuisance. 58 A.L.R.3d 1134.

Validity, construction, and effect of statutes or ordinances prohibiting the sale of obscene materials to minors. 93 A.L.R.3d 297.

What constitutes "public place" within meaning of statutes prohibiting commission of sexual act in public place. 96 A.L.R.3d 692.

Validity and construction of statute or ordinance prohibiting use of "obscene" language in public. 2 A.L.R.4th 1331.

In personam or territorial jurisdiction of state court in connection with obscenity prosecution of author, actor, photographer, publisher, distributor, or other party whose acts were performed outside the state. 16 A.L.R.4th 1318.

Validity, construction, and application of statutes or ordinances regulating sexual performance by child. 21 A.L.R.4th 239.

Advertisements; validity, construction and application of provisions of Postal Reorganization Act of 1970 (18 USCS §§ 1735-1737; 39 USCS §§ 3010, 3011) (so-called "Goldwater Amendment") prohibiting mailing of sexually oriented advertisements to persons who have notified Postal Service that they wish to receive no such material. 15 A.L.R. Fed. 488.

Validity, construction, and application of Federal criminal statute (18 USCS § 1464) punishing utterance of obscene, indecent, or profane language by means of radio communication. 17 A.L.R. Fed. 900.

Am. Jur.

50 Am. Jur. 2d, Lewdness, Indecency, and Obscenity §§ 1, 2, 16.

18 Am. Jur. Proof of Facts, Obscenity in Motion Pictures, §§ 60 et seq.

24 Am. Jur. Proof of Facts 2d 515, Defense to Charges of Sex Offense.

10 Am. jur. Trials, Obscenity Litigation §§ 1 et seq.

CJS.

67 C.J.S., Obscenity §§ 1 et seq.

CHAPTER 31.

INTOXICATING BEVERAGE OFFENSES

Sec.

97-31-1 and 97-31-3. Repealed.
97-31-5. Alcoholic preparations; unlawful to sell or keep certain preparations; exceptions.
97-31-7. Alcoholic preparations; permit to solicit or take orders.
97-31-9. Alcoholic preparations; record of purchases required.
97-31-11. Ginger preparations; extracts.
97-31-13. Repealed.
97-31-15. Delivery of alcohol or wine to person other than consignee; affidavit required; penalty for false affidavit.
97-31-17. Denatured alcohol.
97-31-19. Law officers may store confiscated liquors, stills, etc.; consumption of liquor prohibited.
97-31-21. Manufacturing or distilling unlawful; making wine at home permitted; penalties.
97-31-23. Manufacturing or distilling unlawful; possession of still.
97-31-25. Patent medicines.
97-31-27. Sale, possession, etc. of intoxicating beverages prohibited; penalties.
97-31-29. Sale, possession, etc. of intoxicating beverages prohibited; agent or assistant of seller or buyer punished.
97-31-31. Sale, possession, etc. of intoxicating beverages prohibited; connivance by owner, occupant, etc. of house or boat where liquor kept.
97-31-33. Sale, possession, etc. of intoxicating beverages prohibited; exceptions; records to be kept by carrier; exceptions may be relied upon as defense.
97-31-35. Sale, possession, or use of alcoholic beverages within facilities; employee knowledge; punishment for violations.
97-31-37. Sale of alcohol by druggists; certain sales by retail and wholesale druggists permitted.
97-31-39. Sale of alcohol by druggists; medicinal purposes; physician's certificate.
97-31-41. Sale of alcohol by druggists; wine for sacramental purposes.
97-31-43. Sale of alcohol by druggists; statement of sales or prescriptions to be filed with circuit clerk; filing fee.
97-31-45. Sale of alcohol by druggists; penalties for certain violations.
97-31-47. Transportation of intoxicating liquors into or within state unlawful.
97-31-49. Solicitation of orders for liquors, etc. unlawful.
97-31-51. Witnesses; immunity from prosecution granted; penalty for refusing to testify.
97-31-53. Penalty for violations where punishment not specifically prescribed.
97-31-55. Immunity for certain persons who request emergency medical assistance for individuals appearing to need medical assistance due to alcohol consumption; immunity for peace officer for complying or failing to comply with this section.

§§ 97-31-1 and 97-31-3. Repealed.

Repealed by Laws, 1988, ch. 562, § 3, eff from and after July 1, 1988.

§ 97-31-1. [Codes, Hemingway's 1917, §§ 2160, 2161; 1930, § 2025; Laws, 1942, § 2664; Laws, 1916, ch. 104; Laws, 1934, ch. 172]

§ 97-31-3. [Codes, Hemingway's 1917, §§ 2162, 2163; 1930, § 2026; Laws, 1942, § 2665; Laws, 1916, ch. 104]

Editor's Notes — Former § 97-31-1 was entitled: Advertising of liquors prohibited.
Former § 97-31-3 was entitled: Advertising of liquors prohibited; injunction; penalties.

§ 97-31-5. Alcoholic preparations; unlawful to sell or keep certain preparations; exceptions.

It shall be unlawful for any person, firm, corporation or association, to sell, barter, or give away, or keep for such purposes any sweet spirits of nitre, liquid ginger preparation, elixir of orange peel, pear extract, or any like drug, compound, bitters, elixir or preparation of any kind whatsoever, except where otherwise legalized under the laws of this state, which when drunk to excess, in the form sold, will produce intoxication, except when the same is kept, sold, bartered or given away for either medicinal, or household purposes, or for uses in cooking, baking, and purposes incidental to the treatment of disease.

This section shall have no effect whatsoever on the sections appearing in Chapter 1 of Title 67, Mississippi Code of 1972, cited as the "Local Option Alcoholic Beverage Control Law" of the State of Mississippi. If there is any conflict whatsoever between this section and the Local Option Alcoholic Beverage Control Law cited hereinabove, the provisions of the Local Option Alcoholic Beverage Control Law shall be paramount.

HISTORY: Codes, 1930, § 2021; 1942, § 2660; Laws, 1926, ch. 201; Laws, 1928, ch. 213; Laws, 1968, ch. 356, § 1, eff from and after passage (approved May 27, 1968).

Cross References — Ginger preparations, see § 97-31-11.
Sale of intoxicating proprietary or patent medicines, see § 97-31-25.
Illegality of possession, sale or gift of intoxicating beverages, generally, see § 97-31-27.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Indictment or affidavit charging offense.
3. Evidence.

1. In general.

Buyer could not hold seller liable on implied warranty in sale of extract of ginger as beverage, sale being in violation of criminal statutes. Green v. Brown, 159 Miss. 893, 133 So. 153, 1931 Miss. LEXIS 97 (Miss. 1931).

It is not unlawful to possess intoxicating preparations with no intention to sell or give them away until permit has been secured. Cutts v. State, 148 Miss. 593, 114 So. 389, 1927 Miss. LEXIS 47 (Miss. 1927).

State has burden of proving that defendant possessed allspice for purpose of selling, bartering, or giving same away in violation of statute. Cutts v. State, 148 Miss. 593, 114 So. 389, 1927 Miss. LEXIS 47 (Miss. 1927).

2. Indictment or affidavit charging offense.

Where affidavit charged violation of general statute, defendant, admitting sale of lemon extract, could not be convicted of possessing liquor, though another statute required permit for sale of such extract. McSwain v. State, 158 Miss. 643, 130 So. 696, 1930 Miss. LEXIS 79 (Miss. 1930).

3. Evidence.

Evidence held insufficient to sustain conviction for possessing and keeping for sale Jamaica ginger. Dempsey v. State, 145 Miss. 824, 111 So. 295, 1927 Miss. LEXIS 151 (Miss. 1927).

§ 97-31-7. Alcoholic preparations; permit to solicit or take orders.

No person, firm or corporation, or any association whatsoever, except traveling salesmen engaged in selling exclusively to wholesale and retail merchants shall sell, barter or give away or keep for such purposes, or solicit or take orders therefor, any of the preparations, compounds, bitters, elixirs or extracts mentioned in Section 97-31-5, until a permit so to do shall be granted by the mayor and board of aldermen or mayor and councilmen of any incorporated city, town or village within which said business is or may be proposed to be carried on, or the board of supervisors of the county if the same is or proposed to be carried on without corporate limits of any city, town or village. Such permits may be granted by said authorities upon written application of the person, firm or corporation desiring to deal in such preparation, and the permit, if granted, shall be in writing, shall be spread at large upon the minutes of the proceedings of the mayor and board of aldermen or councilmen or the board of supervisors, as the case may be, giving the name of the dealer, or dealers, the preparation or commodities which it covers, and shall be for a period of one year from the date of its being granted. The granting of a permit to any person, firm or corporation, to barter, sell, give away, keep for sale, or solicit orders for the sale of same shall be in the discretion of the mayor and board of aldermen or councilmen or the board of supervisors, as the case may be, and they shall likewise have full authority and power, in their discretion, to revoke the same.

HISTORY: Codes, 1930, § 2022; 1942, § 2661; Laws, 1926, ch. 201.

Cross References — Local option alcoholic beverage control, see §§ 67-1-1 et seq.
Regulation of sale of alcoholic beverages, generally, see §§ 67-3-1 et seq.
Sale of intoxicating proprietary or patent medicines, see § 97-31-25.

JUDICIAL DECISIONS

1. In general.

Where affidavit charged violation of general statute, defendant, admitting sale of lemon extract, could not be convicted of possessing liquor, though another statute required permit for sale of such extract. McSwain v. State, 158 Miss. 643, 130 So. 696, 1930 Miss. LEXIS 79 (Miss. 1930).

Statute held constitutional. Lindsey v. Louisville, 156 Miss. 66, 125 So. 558, 1930 Miss. LEXIS 144 (Miss. 1930).

It is not unlawful to possess intoxicating preparations with no intention to sell or give them away until permit has been secured. Cutts v. State, 148 Miss. 593, 114 So. 389, 1927 Miss. LEXIS 47 (Miss. 1927).

RESEARCH REFERENCES

Am. Jur.
45 Am. Jur. 2d, Intoxicating Liquors §§ 3 et seq., 87 et seq., 246.

CJS.
48 C.J.S., Intoxicating Liquors §§ 126, 127 et seq.

§ 97-31-9. Alcoholic preparations; record of purchases required.

Every person, firm, or corporation, selling, bartering or giving away, keeping for sale or soliciting orders for any of the preparations mentioned in Sections 97-31-5 and 97-31-7 shall keep a complete record of such preparations so purchased, including invoice or freight bill, which record shall be open to the inspection of any member of the mayor and board of aldermen or councilmen or the board of supervisors, as the case may be, or any peace officer of the state.

HISTORY: Codes, 1930, § 2023; 1942, § 2662; Laws, 1926, ch. 201.

§ 97-31-11. Ginger preparations; extracts.

It shall be unlawful for any person, firm, corporation or association to have, control or possess in this state, or to transport from place to place in the state, or to bring into the state, any liquid ginger preparation, which might be used as an intoxicating beverage, elixir of orange peel, or pear extract by whatever name designated, whether intended for personal use or otherwise.

Any person, firm, corporation or association, violating any of the provisions of this section shall be guilty of a misdemeanor and on conviction shall be punished by a fine of not more than three hundred dollars, or by imprisonment in the county jail for a period of ninety days, or both such fine and imprisonment in the discretion of the court, for each violation.

HISTORY: Codes, 1930, § 2024; 1942, § 2663; Laws, 1930, ch. 39.

Cross References — Unlawful alcoholic preparations, see § 97-31-5.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

Buyer could not hold seller liable on implied warranty in sale of extract of ginger as beverage, sale being in violation of criminal statutes. Green v. Brown, 159 Miss. 893, 133 So. 153, 1931 Miss. LEXIS 97 (Miss. 1931).

Prior to 1930 it was not an offense to possess Jamaica ginger and like medicinal preparations. Johnson v. State, 158 Miss. 613, 131 So. 108, 1930 Miss. LEXIS 104 (Miss. 1930).

§ 97-31-13. Repealed.

Repealed by Laws, 1980, ch. 453, eff from and after passage (approved May 1, 1980).

§ 97-31-13. [Codes, Hemingway's 1921 Supp. § 2163d; 1930, § 2004; 1942, § 2643; Laws, 1918, ch. 189]

Editor's Notes — Former § 97-31-13 was entitled: Banks not to handle drafts, etc., connected with liquor or shipments.

§ 97-31-15. Delivery of alcohol or wine to person other than consignee; affidavit required; penalty for false affidavit.

It shall be unlawful for any railroad company, express company, corporation or other common carrier, or any officer, agent or employee of any of them, or any other person, to deliver any of the alcohol or wine mentioned in this chapter, when transported into or delivered into this state other than to consignees, provided that in any case where the consignee is unable on account of sickness of himself or family, to appear in person and sign for such liquor, the consignee may by written order or authority, authorize some reputable person to sign and receive same for him. In no case shall any delivery be made of a consignment or package of such alcohol or wine as aforesaid without first having such consignee or his lawful agent as aforesaid, sign and deliver to the person in whose charge such consignment or package may be for delivery, a written statement in substance as follows:

"I hereby state that my name is ________; that my postoffice address is ________ Mississippi; that I am more than twenty-one years of age; that I am the consignee to whom the package containing ________ of alcohol or wine (as it may be) was consigned at ________ on the ________ day of ________ 2____ to be used for (set out the use for which they are to be used). I will not use this liquor in violation of any law of this state.

Signed and dated at ________, Miss., this ________ day of ________ 2________.

____________________ Consignee.

By __________, Agent of the consignee."

In no case shall any railroad company, express company, corporation or common carrier or person, or agent of such railroad company, express company, corporation or other common carrier, or person, be liable for damages for not delivering such alcohol or wine or package containing the same until such statement is executed and delivered as herein provided.

Any person who shall make the statement provided in this section, knowing the same to be false, shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined not less than one hundred dollars nor more than five hundred dollars, and be imprisoned in the county jail not less than thirty days nor more than ninety days, in the discretion of the court.

HISTORY: Codes, Hemingway's 1921 Supp. § 2163o; 1930, § 2015; 1942, § 2654; Laws, 1918, ch. 189.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 97-31-17. Denatured alcohol.

Nothing in this chapter shall affect or limit the manufacturing or shipping or receiving of wood or denatured alcohol which cannot be used for beverage purposes, and which can only be used for scientific or mechanical purposes.

HISTORY: Codes, Hemingway's 1921 Supp. § 2163n; 1930, § 2014; 1942, § 2653; Laws, 1918, ch. 189.

§ 97-31-19. Law officers may store confiscated liquors, stills, etc.; consumption of liquor prohibited.

It shall be lawful under this chapter for any officer of the law to store in a public building where appropriate any liquors, stills, vehicles, or other appliances used for violating this chapter and taken by him or by authority of law and placed in his keeping, until such time as the court may order the same to be sold or destroyed, or until such time as the law requires the sale or destruction of them, or any of them. But such officer in charge or possession of such liquors shall not drink or consume any of them, nor shall he permit any other person to drink or consume them, or any of them, nor shall it be permissible for any person to use, consume, or give away or allow any of said liquors to be given away or used or consumed for any purpose, and any officer, or other person violating the provisions of this section shall be guilty of a misdemeanor, and punished as provided herein, and any officer convicted of violating the provisions of this section shall be removed from his office in addition.

HISTORY: Codes, Hemingway's 1921 Supp. § 2163f; 1930, § 2005; Laws, 1942, § 2644; Laws, 1918, ch. 189.

Cross References — Search, seizure, and disposition of property seized pursuant to violation for unlawful possession of alcoholic beverages, see §§ 67-1-17, 67-1-18.

§ 97-31-21. Manufacturing or distilling unlawful; making wine at home permitted; penalties.

It shall be unlawful for any person, firm or corporation to manufacture, or distill any vinous, malt, spirituous, or intoxicating liquor or drink which if drunk to excess will produce intoxication. But this statute shall not prohibit citizens of this state from making wine from grapes or berries grown in this state, at their respective homes and using and consuming the same in the home where made, by the family residing therein and dispensing same to guests within said home. Any person convicted of violating this section shall be guilty of a felony and on conviction thereof shall serve a term in the state penitentiary of not less than one year, nor more than three years for the first offense under this section, and for the second or any subsequent conviction under this section such person shall serve a term of not less than five years, nor more than ten years in the state penitentiary.

HISTORY: Codes, Hemingway's 1917, § 2113; Hemingway's 1921 Supp. § 2163t; 1930, § 1992; 1942, § 2631; Laws, 1908, ch. 113; Laws, 1918, ch. 189.

Cross References — Permits concerning alcoholic beverages, see §§ 67-1-51, 67-1-53.

Right to make homemade wine for domestic use, see § 67-3-11.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Indictment.
3. Evidence.

1. In general.

Since the state at trial chose to proceed on the indictment charging the defendant with distilling wine in violation of this section, it could not argue for affirmance of his conviction on proof that he did not have a valid permit issued under the Native Wine Act. Martin v. State, 501 So. 2d 1124, 1987 Miss. LEXIS 2285 (Miss. 1987).

Possession of homemade intoxicating wine through own fermentation for household purposes not prohibited. Stepp v. State, 132 Miss. 132, 95 So. 838, 1923 Miss. LEXIS 27 (Miss. 1923).

Elements constituting unlawful manufacture of "intoxicating liquors" stated. Anderson v. State, 131 Miss. 584, 95 So. 637, 1923 Miss. LEXIS 210 (Miss. 1923).

Conviction for unlawful possession does not bar prosecutions for manufacturing. Gordon v. State, 127 Miss. 396, 90 So. 95, 1921 Miss. LEXIS 231 (Miss. 1921).

Conviction for manufacturing intoxicants not warranted if defendant merely consented thereto. Stribling v. State, 124 Miss. 141, 86 So. 897, 1920 Miss. LEXIS 534 (Miss. 1920).

Knowledge that whisky is being made held not sufficient to convict for manufacturing. Powers v. State, 124 Miss. 425, 86 So. 862, 1920 Miss. LEXIS 525 (Miss. 1920).

Failure to interfere with one manufacturing intoxicants not an offense. Powers v. State, 124 Miss. 425, 86 So. 862, 1920 Miss. LEXIS 525 (Miss. 1920).

One loaning another whisky with understanding that a similar amount was to be returned cannot be convicted under this section [Code 1942, § 2631]. Jones v. State, 108 Miss. 530, 66 So. 987, 1914 Miss. LEXIS 236 (Miss. 1914).

2. Indictment.

An indictment charging the defendant with violation of this section was not defective for failure to allege that the wine he possessed was not for personal or domestic use, but the case was reversed on the grounds that the charge for which the defendant was indicted and tried had been superseded, with regard to muscadine wine, by the Native Wine Act (§§ 67-5-1 et seq). Martin v. State, 501 So. 2d 1124, 1987 Miss. LEXIS 2285 (Miss. 1987).

Indictment charging manufacture of spirituous, vinous, malted, fermented and intoxicating liquors is not duplicitous. State v. Schmitz, 128 Miss. 463, 91 So. 129, 1922 Miss. LEXIS 130 (Miss. 1922).

3. Evidence.

In prosecution for manufacturing liquor, evidence that witness at other times had seen things indicating liquor had been manufactured held improperly admitted. Craft v. State, 155 Miss. 465, 124 So. 488, 1929 Miss. LEXIS 308 (Miss. 1929).

Evidence held sufficient to sustain conviction for unlawful manufacture. Kidd v. State, 137 Miss. 419, 102 So. 68, 1924 Miss. LEXIS 204 (Miss. 1924).

Evidence showing preparation for manufacturing did not support conviction for manufacture. Hughes v. State, 96 So. 516 (Miss. 1923).

Evidence held sufficient to sustain conviction of attempt to distill. Powell v. State, 128 Miss. 107, 90 So. 625, 1921 Miss. LEXIS 303 (Miss. 1921).

RESEARCH REFERENCES

Am. Jur.
45 Am. Jur. 2d, Intoxicating Liquors §§ 403 et seq.

§ 97-31-23. Manufacturing or distilling unlawful; possession of still.

It shall be unlawful for any person, firm or corporation to own or control or have in his or its possession any distillery commonly called a still or any integral part thereof. But it shall not be unlawful to own or have in possession a distillery or still in the following circumstances:

(a) Where the same is used exclusively for the distillation of rosin products;

(b) Where the same is used exclusively for the distillation of water;

(c) Where the same is kept and lawfully used in any laboratory;

(d) Where the same is in the possession of any officers of the law, to be disposed of according to law;

(e) Where the person or corporation can prove that the same is in his or its possession for the purpose of being delivered up to an officer of the law to be disposed of according to law;

(f) Where the same is used exclusively for the distillation of ethyl alcohol to be used solely for fuel purposes.

Any person guilty of violating this section shall be guilty of a felony and on conviction shall be confined in the state penitentiary not less than one (1) year, nor more than three (3) years for his first offense, and for his second offense he shall be confined in the state penitentiary not less than five (5), nor more than ten (10) years.

HISTORY: Codes, 1930, §§ 1993, 1994; 1942, §§ 2632, 2633; Laws, 1924, ch. 245; Laws, 1980, ch. 348, § 2, eff from and after passage (approved April 23, 1980).

Cross References — Breweries, generally, see §§ 27-71-501 et seq.
Alcoholic content of wine and beer, see § 67-3-5.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Indictment.
3. Evidence.
4. —Admissibility.
5. —Sufficiency.
6. Instructions.
7. Miscellaneous.

1. In general.

Offense of possessing a complete still and offense of possessing integral parts of still are separate offenses. Wilburn v. State, 204 Miss. 92, 37 So. 2d 12, 1948 Miss. LEXIS 345 (Miss. 1948).

Proof must be strict and facts applied with utmost caution before common articles of ordinary domestic use can be brought within statute prohibiting possession of integral parts of still. Grice v. State, 167 Miss. 771, 150 So. 659, 1933 Miss. LEXIS 157 (Miss. 1933).

Articles of common domestic use, such as milk can and lid and discarded automobile gas line pipe, must have been used for successful production of intoxicating liquor, or must be about to be so successfully used, before statute prohibiting possession of parts of still is applicable. Grice v. State, 167 Miss. 771, 150 So. 659, 1933 Miss. LEXIS 157 (Miss. 1933).

2. Indictment.

Indictment under this section [Code 1942, § 2632] charging in a single count that defendant owned, controlled and knowingly possessed a still for use in the unlawful manufacture of intoxicating liquor, did not include the alternative charge of possession of an integral part. Black v. State, 199 Miss. 147, 24 So. 2d 117, 1945 Miss. LEXIS 278 (Miss. 1945).

The alternative offense under this section [Code 1942, § 2632] in respect to the integral parts of a still should be charged in a separate count or in a separate indictment so as to inform defendant of the exact nature of the charge in the indictment preferred against him. Black v. State, 199 Miss. 147, 24 So. 2d 117, 1945 Miss. LEXIS 278 (Miss. 1945).

Indictment charging unlawful possession of still held not demurrable because it did not show that still was a whisky still. Powe v. State, 176 Miss. 455, 169 So. 763, 1936 Miss. LEXIS 144 (Miss. 1936).

Indictment charging that defendant "wilfully" had in his possession part of still held sufficient without using word "knowingly." Ousley v. State, 154 Miss. 451, 122 So. 731, 1929 Miss. LEXIS 158 (Miss. 1929).

Indictment for possession of integral part of still in language of statute held sufficient. State v. Hinton, 139 Miss. 513, 104 So. 354, 1925 Miss. LEXIS 172 (Miss. 1925).

Exceptions in act, making possession of still offense, held negative by indictment. Mitchell v. State, 139 Miss. 108, 103 So. 815, 1925 Miss. LEXIS 129 (Miss. 1925).

Indictment for possession of still must negative exceptions. State v. Speaks, 132 Miss. 159, 96 So. 176, 1923 Miss. LEXIS 46 (Miss. 1923); Dawsey v. State, 136 Miss. 18, 100 So. 526, 1924 Miss. LEXIS 105 (Miss. 1924); State v. Clark, 145 Miss. 207, 110 So. 447, 1926 Miss. LEXIS 15 (Miss. 1926).

3. Evidence.

The prohibited possession may be established by circumstantial evidence and inferences from evidence. Shaw v. State, 248 Miss. 823, 161 So. 2d 629, 1964 Miss. LEXIS 310 (Miss. 1964).

4. —Admissibility.

Evidence of search of defendant's premises and finding parts of still was admissible notwithstanding affidavit and search warrant were lost where state made oral proof of that fact and of the substance of those documents before the trial judge. Jefferson v. State, 207 Miss. 576, 42 So. 2d 772, 1949 Miss. LEXIS 369 (Miss. 1949).

Evidence that parts of still were found by police officers while searching defendant's premises under warrant authorizing search for stolen beef is admissible in a prosecution under this section [Code 1942, § 2632]. Jefferson v. State, 207 Miss. 576, 42 So. 2d 772, 1949 Miss. LEXIS 369 (Miss. 1949).

Evidence of finding of homemade whiskey on defendant's premises was competent in a prosecution for unlawful possession of an integral part of a still, since his possession of the distilled homemade whiskey at the same time he possessed a part of a distillery had a bearing upon whether he was engaged in that business by the use of a distillery. Crafton v. State, 200 Miss. 10, 26 So. 2d 347, 1946 Miss. LEXIS 262 (Miss. 1946).

Evidence obtained under valid search warrant was admissible in prosecution for possessing integral parts of a distillery, where parts of the distillery were in possession of defendant at the place described in the search warrant. Williams v. State, 198 Miss. 848, 23 So. 2d 692, 1945 Miss. LEXIS 260 (Miss. 1945).

Still seized may be offered in evidence on trial of persons arrested for possessing it. Kennedy v. State, 139 Miss. 579, 104 So. 449, 1925 Miss. LEXIS 175 (Miss. 1925).

Witness having knowledge of use of stills may testify as to use of particular still, to negative lawful use. State v. Hinton, 139 Miss. 513, 104 So. 354, 1925 Miss. LEXIS 172 (Miss. 1925).

5. —Sufficiency.

Possession jointly with another may be the basis of a conviction. Shaw v. State, 248 Miss. 823, 161 So. 2d 629, 1964 Miss. LEXIS 310 (Miss. 1964).

Testimony showing without question that accused possessed a complete distillery is sufficient to sustain a conviction under this section [Code 1942, § 2632] of offense of having in possession integral parts of a still. Wilburn v. State, 204 Miss. 92, 37 So. 2d 12, 1948 Miss. LEXIS 345 (Miss. 1948).

The finding of moonshine whiskey and a part of a still, known as a "worm", on defendant's premises, and indications of recent removal of the rest of the still, held sufficient to convict defendant of unlawful possession of an integral part of a still. Crafton v. State, 200 Miss. 10, 26 So. 2d 347, 1946 Miss. LEXIS 262 (Miss. 1946).

Evidence that officers found wagon loaded with several mash and cooking barrels and cooking utensils, but that the coil was missing which was an absolutely essential part of a complete still, was insufficient to sustain conviction for unlawful possession of a still under this section [Code 1942, § 2632]. Black v. State, 199 Miss. 147, 24 So. 2d 117, 1945 Miss. LEXIS 278 (Miss. 1945).

Conviction for unlawful possession of distillery held proper, where proof was clear and convincing beyond a reasonable doubt and was entirely undisputed, and nothing suggested lawful use of distillery or its possession for any other purpose than distilling of whisky. McLemore v. State, 178 Miss. 525, 172 So. 139, 1937 Miss. LEXIS 176 (Miss. 1937).

Evidence that defendant was seen standing with one hand on still which was not on his land or close thereto held insufficient to sustain conviction for owning or possessing still or an integral part thereof. Ray v. State, 175 Miss. 623, 168 So. 617, 1936 Miss. LEXIS 89 (Miss. 1936).

Evidence held insufficient to sustain conviction for possession of integral parts of still. Pickle v. State, 151 Miss. 549, 118 So. 625, 1928 Miss. LEXIS 368 (Miss. 1928).

Evidence held to sustain conviction for unlawful possession of still. Reynolds v. State, 136 Miss. 329, 101 So. 485, 1924 Miss. LEXIS 140 (Miss. 1924); Traxler v. State, 244 Miss. 403, 142 So. 2d 14, 1962 Miss. LEXIS 462 (Miss. 1962).

6. Instructions.

Where indictment charged that defendant wilfully, unlawfully, and feloniously had a still in his possession, omission of word "wilfully" in instruction defining offense was not fatal defect, in view of evidence conclusively showing that possession of still was wilful, unlawful, and felonious. McLemore v. State, 178 Miss. 525, 172 So. 139, 1937 Miss. LEXIS 176 (Miss. 1937).

7. Miscellaneous.

Where there was not a free, voluntary and intelligent plea of guilty and no intelligent, understanding, and competent waiver of counsel on the part of a defendant convicted of possession of a whisky still, his motion for permission to withdraw his plea of guilty should be granted. Plummer v. State, 252 Miss. 45, 172 So. 2d 547, 1965 Miss. LEXIS 1074 (Miss. 1965).

In prosecution for unlawful possession of still, affirmative defense of duress held not established in absence of proof of impelling danger, present, imminent, and impending at time accused participated in crime of possessing still. Powe v. State, 176 Miss. 455, 169 So. 763, 1936 Miss. LEXIS 144 (Miss. 1936).

Although evidence was insufficient to support conviction for owning or possessing a still or an integral part thereof, case would be remanded where defendant had not requested peremptory instruction at close of evidence. Ray v. State, 175 Miss. 623, 168 So. 617, 1936 Miss. LEXIS 89 (Miss. 1936).

Law providing that it should become effective from and after passage was in effect when approved by Governor. Moree v. State, 130 Miss. 341, 94 So. 226, 1922 Miss. LEXIS 215 (Miss. 1922).

RESEARCH REFERENCES

Am. Jur.
45 Am. Jur. 2d, Intoxicating liquors §§ 403 et seq.

§ 97-31-25. Patent medicines.

The sale or giving away of any proprietary or patent medicine by whatsoever name called, which, if drunk to excess, will produce intoxication, shall be deemed and held to be a sale of intoxicating liquors, unless there shall be a printed label attached to each bottle or other receptacle containing the same, a facsimile of a certificate issued by the commissioner of internal revenue of the United States to the effect that such medicine has been examined by him or under his direction and that it does not contain such percentage of alcohol as to make the sale of same unlawful without an internal revenue license for the sale of liquors.

HISTORY: Codes, 1906, § 1767; Hemingway's 1917, § 2102; 1930, § 1989; 1942, § 2628; Laws, 1908, ch. 115.

Cross References — Alcoholic preparations and extracts, see §§ 97-31-5 through 97-31-11.

RESEARCH REFERENCES

Am. Jur.
45 Am. Jur. 2d, Intoxicating Liquors §§ 12, 129.

CJS.
48 C.J.S., Intoxicating Liquors §§ 10, 316, 319 and 320.

§ 97-31-27. Sale, possession, etc. of intoxicating beverages prohibited; penalties.

If any person shall sell or barter, or give away or keep or have in his possession, except as authorized in this chapter, any vinous, alcoholic, malt, intoxicating or spirituous liquor, or intoxicating bitters or drinks, which if drunk to excess will produce intoxication, such person, and all others who may have owned or had any interest at the time in the liquors, bitters or drinks sold or bartered, or kept or in possession contrary to law, shall on conviction, be punished as follows:

(a) By a fine of not less than one hundred dollars, nor more than five hundred dollars, or by imprisonment in the county jail not less than one week nor more than three months, or both, for the first conviction under this section.

(b) By a fine of not less than one hundred dollars and by imprisonment in the county jail not less than sixty days, nor more than six months, for the second conviction for violating this section.

(c) By imprisonment in the state penitentiary not less than one year nor more than five years for conviction the third time under this section for the violation thereof after having been twice convicted of its violation.

HISTORY: Codes, Hutchinson's 1848, ch. 11, art. 8(3); 1857, ch. 20, art. 9; 1871, § 2690; 1880, § 1112; 1892, § 1592; 1906, § 1746; Hemingway's 1917, § 2086; 1930, § 1974; 1942, § 2613; Laws, 1908, ch. 115; Laws, 1912, ch. 214.

Cross References — Local option alcoholic beverage control, see §§ 67-1-1 et seq.

Unlawful possession of alcoholic beverages or related personal property, see § 67-1-17.

Regulation of sale of alcoholic beverages, generally, see §§ 67-3-1 et seq.

Drunkenness of public officers, see § 97-11-23.

Regulation of certain alcoholic preparations and extracts, see §§ 97-31-5 through 97-31-11.

Exceptions to prohibited sale, possession, etc., generally, see § 97-31-33.

Sales by druggists, see §§ 97-31-37 through 97-31-45.

JUDICIAL DECISIONS

ANALYSIS

I. UNDER CURRENT LAW.

1. In general.
2. Validity.
3. Purpose.
4. Intent; belief.
5. Sale, what amounts to.
6. Possession.
7. Alcoholic content.
8. Jamaica ginger; lemon extract.
9. Indictment or information, generally.
10. —Sufficiency.
11. —After previous conviction.
12. —Separateness of search warrant affidavit.
13. —Where general prohibition laws suspended.
14. Variance between allegations and proof.
15. Evidence.
16. —Admissibility.
17. —Sufficiency.
18. Instructions.
19. Repeating offense.
20. Punishment.
21. Former acquittal or conviction.
22. Appeal.
23. Miscellaneous.

II. UNDER FORMER LAW.

24. Advertising of liquors prohibited.

I. UNDER CURRENT LAW.

1. In general.

The fact that in certain counties of the state local officials have openly refused to enforce the laws prohibiting the sale and possession of intoxicating liquor is not evidence of purposeful or intentional discrimination against a defendant charged with unlawful possession of liquor in a county where officers have made a determined and largely successful effort to enforce such laws, and for that reason such a defendant cannot assert that he has been denied equal protection and due process under the Fourteenth Amendment to the U.S. Constitution. State v. Wood, 187 So. 2d 820, 1966 Miss. LEXIS 1356 (Miss. 1966).

There is no repugnancy between statutes imposing a tax upon the illegal sale of intoxicating beverages and a statute prohibiting the possession thereof. State v. Wood, 187 So. 2d 820, 1966 Miss. LEXIS 1356 (Miss. 1966).

Where property misappropriated by dishonest employees consisted of a quantity of intoxicating liquors belonging to their employer engaged in an illegal business, the employer cannot recover for his loss under a blanket fidelity bond. Smith v. Maryland Casualty Co., 252 Miss. 81, 172 So. 2d 574, 1965 Miss. LEXIS 1079 (Miss. 1965).

Despite the fact that the issuer of a blanket fidelity bond contracted that it would not defend any claim on the ground that the insured employer was engaged in an illegal business, no recovery was permitted for the misappropriation by dishonest employees of a quantity of intoxicating liquors, the possession of which was statutorily illegal. Smith v. Maryland Casualty Co., 252 Miss. 81, 172 So. 2d 574, 1965 Miss. LEXIS 1079 (Miss. 1965).

Where it is impossible to determine, because of the confused state of the record, whether the defendant, charged with possession of intoxicating liquors, was convicted on the first or the second charge against him in a mayor's court or an ex officio justice court, the conviction must be reversed and the case remanded. Suggs v. State, 250 Miss. 730, 168 So. 2d 514, 1964 Miss. LEXIS 494 (Miss. 1964).

In view of the enactment of Code 1942, § 10112 the State of Mississippi does not have any sharply defined public policy affecting or relating to the practice of businesses entertaining or ingratiating themselves with their customers by serving or donating to them intoxicating liquors on which the state and its subdivisions have collected full tribute, and the deduction of the cost of such entertainment and donations by a taxpayer on his federal income tax returns is allowed. Stacy v. United States, 231 F. Supp. 304, 1963 U.S. Dist. LEXIS 9452 (S.D. Miss. 1963).

This section [Code 1942, § 2613] does not make it illegal to drink intoxicants, hence consumer of liquor is not in pari delicto with seller, so as to preclude recovery for fall on dangerous steps in leaving premises. Fournier v. United States, 220 F. Supp. 752, 1963 U.S. Dist. LEXIS 7401 (S.D. Miss. 1963).

Chapter relating to wine and beer repealed statute making it unlawful to sell beer. Hays v. State, 219 Miss. 808, 69 So. 2d 845, 1954 Miss. LEXIS 389 (Miss. 1954).

Where a statute making it unlawful to sell beer was repealed by statute which authorized sale within the state and permitted counties to prohibit such sales, and where a majority of qualified electors in county determined that the sale of beer should not be permitted within the county, such a sale of beer thereafter was prohibited and punishable as violation of chapter relating to wine and beer. Hays v. State, 219 Miss. 808, 69 So. 2d 845, 1954 Miss. LEXIS 389 (Miss. 1954).

In prosecution for unlawful possession of intoxicating liquors where defendant failed to file motion for continuance in a proper written form as prescribed by this section [Code 1942, § 2613], this was sufficient justification for the circuit court to refuse to grant the requested continuance. Smith v. State, 219 Miss. 741, 69 So. 2d 837, 1954 Miss. LEXIS 381 (Miss. 1954).

The use of strong methods by collector to collect from delinquent taxpayers penalties on sale of intoxicating liquor, is not discrimination against such delinquents where such force is not necessary to secure payment by others. Bishop v. Bailey, 209 Miss. 892, 48 So. 2d 588, 1950 Miss. LEXIS 454 (Miss. 1950).

Exceptions to this section [Code 1942, § 2613] are contained in Code 1942, §§ 2634, 2635 and 2636, prescribing how licensed retail druggists may sell under certain conditions pure alcohol for medicinal purposes; grain alcohol to chemists and bacteriologists engaged in scientific work; and wine to be used for sacramental purposes. Gilbert v. State, 198 Miss. 175, 21 So. 2d 914, 1945 Miss. LEXIS 181 (Miss. 1945).

Code 1906, § 1746, as amended, and Code 1906, § 1797, create separate and distinct offenses, and proof of possession with intent to sell, without more, is not sufficient to support a conviction under the former act, as to "keep for sale" means to have on hand habitually. Collins v. State, 107 Miss. 619, 65 So. 645, 1914 Miss. LEXIS 126 (Miss. 1914).

Also within 5 miles of state university. Wilburn v. State, 101 Miss. 392, 58 So. 7, 1913 Miss. LEXIS 1 (Miss. 1913).

Enactment of state-wide prohibition law impliedly repeals local laws, among others that forbidding sale of liquor within 5 miles of the courthouse of a named county. Hughes v. State, 97 Miss. 528, 52 So. 631, 1910 Miss. LEXIS 256 (Miss. 1910).

But a statute prohibiting sale of liquor within 5 miles of state university does not prevent conviction under local option law. Borroum v. State, 94 Miss. 88, 47 So. 480, 1908 Miss. LEXIS 8 (Miss. 1908).

2. Validity.

This section [Code 1942, § 2613] does not violate the constitution. Dossett v. State, 211 Miss. 650, 52 So. 2d 490, 1951 Miss. LEXIS 395 (Miss. 1951).

This section [Code 1942, § 2613] does not violate § 32, Constitution 1890, though liquor be possessed by one solely for his own use and consumption. Stepp v. State, 202 Miss. 725, 32 So. 2d 447, 1947 Miss. LEXIS 335 (Miss. 1947).

3. Purpose.

The primary intent of the legislature in the enactment of statutes taxing the illegal sale of intoxicating liquor was to impose a penalty and a tax upon those persons deliberately violating the state's prohibition laws. State v. Wood, 187 So. 2d 820, 1966 Miss. LEXIS 1356 (Miss. 1966).

This statute [Code 1942, § 2613] was enacted in aid of, and to make more effective, the law as against sales and giving away of intoxicating liquor. Stepp v. State, 202 Miss. 725, 32 So. 2d 447, 1947 Miss. LEXIS 335 (Miss. 1947).

This section [Code 1942, § 2613] forbids sale of enumerated liquors without reference to whether or not they intoxicate, because they are known to be of an intoxicating character, and also any other drinks which will cause intoxication if taken to excess. FULLER v. CITY OF JACKSON, 97 Miss. 237, 52 So. 873, 1910 Miss. LEXIS 285 (Miss. 1910).

4. Intent; belief.

Intent of possessor is immaterial. Lowe v. Jackson, 181 Miss. 296, 179 So. 568, 1938 Miss. LEXIS 71 (Miss. 1938).

An intention to sell falls short of a violation of the statute. J. Livelar & Co. v. State, 98 Miss. 330, 53 So. 681, 1910 Miss. LEXIS 67 (Miss. 1910).

Except in the case of pharmaceutical preparations, the law punishes selling intoxicants regardless of seller's intent. Bacot v. State, 94 Miss. 225, 48 So. 228, 1908 Miss. LEXIS 38 (Miss. 1908).

A seller is not protected by his ignorance of the fact that the liquor sold is intoxicating or his belief to the contrary. King v. State, 66 Miss. 502, 6 So. 188, 1889 Miss. LEXIS 137 (Miss. 1889).

5. Sale, what amounts to.

One purchasing whisky with money of another is guilty of unlawful sale. Walters v. State, 127 Miss. 324, 90 So. 76, 1921 Miss. LEXIS 232 (Miss. 1921).

One who loaned another whisky with the understanding that a similar amount was to be returned did not violate Laws 1908, ch. 113. Jones v. State, 108 Miss. 530, 66 So. 987, 1914 Miss. LEXIS 236 (Miss. 1914).

One purchasing whisky for third person is liable. Brantley v. State, 107 Miss. 466, 65 So. 512, 1914 Miss. LEXIS 109 (Miss. 1914).

Boardinghouse keeper serving beer or wine to boarders as part of dinner is guilty of selling liquor. Skermetta v. State, 107 Miss. 429, 65 So. 502, 1914 Miss. LEXIS 100 (Miss. 1914).

One contributing to pool to buy whisky and helping consume it is guilty of selling liquor. Horton v. State, 105 Miss. 333, 62 So. 360, 1913 Miss. LEXIS 217 (Miss. 1913).

Accused who ordered a keg of beer which was paid for and to be drunk by a number of persons, including himself, was not guilty of an unlawful sale. Dantzler v. State, 104 Miss. 233, 61 So. 305, 1913 Miss. LEXIS 22 (Miss. 1913).

One may be convicted of illegal sale in this state although only delivery occurred here. Anglin v. State, 96 Miss. 215, 50 So. 492, 1909 Miss. LEXIS 72 (Miss. 1909).

Where accused wrote his name on a blank piece of paper and delivered it to persons who carried it to the express agent and gave it to him with $3.50 and received 4 quarts of whisky from the agent, this constitutes a sale although no words passed between any of the parties. Bennett v. State, 87 Miss. 803, 40 So. 554, 1905 Miss. LEXIS 214 (Miss. 1905).

Delivery of liquor to purchaser of ticket entitling him to a quantity thereof constitutes a sale although the money was paid by purchaser when he received the ticket. Harper v. State, 85 Miss. 338, 37 So. 956, 1904 Miss. LEXIS 164 (Miss. 1904).

A sale of personal property is ordinarily completed by its delivery to the purchaser. Delivery to a carrier for shipment, in the usual course of trade, is prima facie a delivery to the consignee. Pearson v. State, 66 Miss. 510, 6 So. 243, 1889 Miss. LEXIS 138 (Miss. 1889).

6. Possession.

Since a person who is intoxicated may or may not have had unlawful possession of liquor, guilt of the unlawful possession does not necessarily follow from the mere fact of voluntary intoxication. Hutson v. Hutson, 239 Miss. 413, 123 So. 2d 550, 1960 Miss. LEXIS 300 (Miss. 1960).

That one was in illegal possession of the liquor prior to drinking it does not preclude him from seeking relief against one who obtained a deed from him for no consideration while he was so intoxicated as not to know what he was doing. Hutson v. Hutson, 239 Miss. 413, 123 So. 2d 550, 1960 Miss. LEXIS 300 (Miss. 1960).

One cannot be convicted of unlawful possession of liquor found on his premises where it is equally probable that some other person had possession and control. Hill v. State, 234 Miss. 64, 105 So. 2d 478, 1958 Miss. LEXIS 462 (Miss. 1958).

Responsible possession of intoxicating liquor must be shown by the state to justify a conviction of one accused of possession of intoxicating liquor. Shumpert v. State, 229 Miss. 730, 91 So. 2d 745, 1957 Miss. LEXIS 320 (Miss. 1957).

A presumption of possession of whisky when found on householder's premises does not apply where the accused lived in five-room house with two other men as tenants and also other men slept at the house and had access to the house, and where the officers found half gallon of whisky in the yard. Foster v. State, 49 So. 2d 258 (Miss. 1950).

Where evidence disclosed that officers, under proper warrant, searched defendant's place of business, followed a well used path therefrom, which divided into two forks, and uncovered liquor at end of each path, and that path served as access to no objective other than liquor, issue of whether defendant was guilty of possessing liquor was properly submitted to the jury. Chamblee v. State, 44 So. 2d 415 (Miss. 1950).

Unlawful possession by the owner of a public place of business is not shown where the whiskey is found in an unlocked cabinet frequently used by all employees of the establishment. Sellers v. Picayune, 202 Miss. 741, 32 So. 2d 450, 1947 Miss. LEXIS 337 (Miss. 1947).

The rebuttable presumption that liquor found on premises of which a person is in possession and control is in that person's possession is warranted where whiskey is found at three different places near such person's place of business and from which places the person was seen coming to his place of business shortly before a search warrant was obtained. Ratcliff v. State, 199 Miss. 866, 26 So. 2d 69, 1946 Miss. LEXIS 255 (Miss. 1946).

The presumption that liquor found on premises on which a person is in possession and control is in that person's possession is fully rebutted where it is undisputed that bottles of whiskey being broken when officers arrived had been brought by another less than a half hour before the arrival of the officers and that it belonged to such other person. Ratcliff v. State, 199 Miss. 866, 26 So. 2d 69, 1946 Miss. LEXIS 255 (Miss. 1946).

Intoxicating liquor in bottles found in the pocket of a jacket of defendant's daughter on defendant's premises established the possession of defendant. Quick v. State, 192 Miss. 789, 7 So. 2d 887, 1942 Miss. LEXIS 76 (Miss.), cert. denied, 317 U.S. 630, 63 S. Ct. 51, 87 L. Ed. 509, 1942 U.S. LEXIS 294 (U.S. 1942).

Where intoxicating liquor is found on the premises of which the defendant is in possession and control, a rebuttable presumption of fact arises that it was in his possession. Williamson v. State, 191 Miss. 643, 4 So. 2d 220, 1941 Miss. LEXIS 178 (Miss. 1941); Quick v. State, 192 Miss. 789, 7 So. 2d 887, 1942 Miss. LEXIS 76 (Miss.), cert. denied, 317 U.S. 630, 63 S. Ct. 51, 87 L. Ed. 509, 1942 U.S. LEXIS 294 (U.S. 1942); Shumpert v. State, 229 Miss. 730, 91 So. 2d 745, 1957 Miss. LEXIS 320 (Miss. 1957).

Intent of possessor is immaterial. Lowe v. Jackson, 181 Miss. 296, 179 So. 568, 1938 Miss. LEXIS 71 (Miss. 1938).

Wife's taking of jug of whisky brought in by another for her husband, and throwing it out and breaking jug held not unlawful "possession" within statute. Garland v. State, 165 Miss. 136, 146 So. 637, 1933 Miss. LEXIS 290 (Miss. 1933).

The joint possession of husband and wife constitutes a prima facie case against the husband and not the wife. Wylie v. State, 151 Miss. 897, 119 So. 825, 1929 Miss. LEXIS 253 (Miss. 1929).

On sufficiency of proof of possessing. Schillings v. State, 151 Miss. 361, 118 So. 137, 1928 Miss. LEXIS 310 (Miss. 1928).

That liquor belonged to drunken person whom accused was helping home held no defense to prosecution for possession thereof. Adair v. State, 148 Miss. 240, 114 So. 345, 1927 Miss. LEXIS 37 (Miss. 1927).

Mere visitor at home, knowing nothing of still therein, may not be convicted of having possession thereof. Brewer v. State, 142 Miss. 100, 107 So. 376, 1926 Miss. LEXIS 73 (Miss. 1926).

Defendant's confession, without proof of corpus delicti, not sufficient to sustain conviction of having possession of liquor. Morton v. State, 136 Miss. 284, 101 So. 379, 1924 Miss. LEXIS 129 (Miss. 1924).

7. Alcoholic content.

Where one is charged with the possession of "intoxicating liquors, to wit, whiskey, wine and beer", it is not necessary to prove that the alcoholic content of the wine and beer was such as to bring them within the description of intoxicating liquors. Warbington v. State, 234 Miss. 743, 107 So. 2d 578, 1958 Miss. LEXIS 545 (Miss. 1958).

In prosecution for unlawful possession of intoxicating liquor for possessing malt liquor or beer, the affidavit must allege and the proof must show an alcoholic content in excess of 4 per cent by weight. Hall v. State, 199 Miss. 560, 24 So. 2d 780, 1946 Miss. LEXIS 224 (Miss. 1946).

Mere fact that the malt liquor or beer may be intoxicating does not of necessity show that the alcoholic content exceeded 4 per cent by weight. Hall v. State, 199 Miss. 560, 24 So. 2d 780, 1946 Miss. LEXIS 224 (Miss. 1946).

This section [Code 1942, § 2613] does not embrace a beverage which contains only .18% of alcohol by volume and .13% by weight. FULLER v. CITY OF JACKSON, 97 Miss. 237, 52 So. 873, 1910 Miss. LEXIS 285 (Miss. 1910).

Malt ale which contains 2.71% alcohol by volume and 2.12% by weight is an intoxicant. FULLER v. CITY OF JACKSON, 97 Miss. 237, 52 So. 873, 1910 Miss. LEXIS 285 (Miss. 1910).

8. Jamaica ginger; lemon extract.

Where affidavit charged violation of general statute, defendant, admitting sale of lemon extract, could not be convicted of possessing liquor, though another statute required permit for sale of such extract. McSwain v. State, 158 Miss. 643, 130 So. 696, 1930 Miss. LEXIS 79 (Miss. 1930).

Defendant's admission of possessing lemon extract and sale thereof without license held insufficient to sustain conviction for possessing intoxicating liquors. McSwain v. State, 158 Miss. 643, 130 So. 696, 1930 Miss. LEXIS 79 (Miss. 1930).

Sale of Jamaica ginger held for beverage purchases; buyers, detectives, asking for it for that purpose. Brown v. State, 142 Miss. 104, 107 So. 381, 1926 Miss. LEXIS 75 (Miss. 1926).

Possession and sale of proprietary remedies or patent medicines with alcoholic percentage indicated thereon not unlawful, although producing intoxication if drunk to excess; tincture of ginger or Jamaica ginger, prepared in accordance with United States pharmacopoeia are not intoxicating liquors per se. Young v. State, 137 Miss. 188, 102 So. 161, 1924 Miss. LEXIS 208 (Miss. 1924).

Mere possession of tincture of ginger or Jamaica ginger not unlawful, although sale as beverage unlawful. Young v. State, 137 Miss. 188, 102 So. 161, 1924 Miss. LEXIS 208 (Miss. 1924).

Jamaica ginger is "spirituous" or "vinous liquor" within act imposing penalties for sale. Payne v. State, 125 Miss. 896, 88 So. 483, 1921 Miss. LEXIS 171 (Miss. 1921).

A sale of tincture of ginger prepared in good faith as a medicine by a duly licensed druggist, does not violate this section. The test is whether the tincture, or essence, was sold in good faith as a medicine, or whether it was a sham preparation, really an intoxicating liquor and sold as a beverage. Bertrand v. State, 73 Miss. 51, 18 So. 545, 1895 Miss. LEXIS 83 (Miss. 1895).

9. Indictment or information, generally.

To warrant conviction under this statute [Code 1942, § 2613], the indictment must refer to the statute. Barnes v. State, 239 Miss. 756, 125 So. 2d 293, 1960 Miss. LEXIS 351 (Miss. 1960).

Circuit court had jurisdiction to try accused for unlawful possession of intoxicating liquor where no affidavit was filed with the justice of the peace so charging accused although justice placed accused under appearance bond to await action of grand jury. Humble Oil & Refining Co. v. State, 40 So. 2d 307 (Miss. 1949).

It is unnecessary to charge in affidavit charging possession of whisky that the possession was unlawful, since possession of whisky is unlawful under all circumstances. Gilbert v. State, 198 Miss. 175, 21 So. 2d 914, 1945 Miss. LEXIS 181 (Miss. 1945).

In charging offense of unlawful possession of wine, it is not necessary to negative exception of homemade wine. Forbert v. State, 179 Miss. 66, 174 So. 248, 1937 Miss. LEXIS 15 (Miss. 1937).

An indictment under Laws 1908, ch. 115, may be amended by the insertion of the word "liquors" after "intoxicating." Keys v. State, 110 Miss. 433, 70 So. 457, 1915 Miss. LEXIS 50 (Miss. 1915).

Neither justice nor circuit court could try accused on charge of illegally retailing liquor without proper affidavit. Hall v. State, 91 Miss. 216, 44 So. 826, 1907 Miss. LEXIS 151 (Miss. 1907).

Upon appeal, it is error to permit the state to amend the affidavit charging a sale to certain persons by striking out their names and to prove a sale to a different person. Though the names were unnecessary in the first place, they became a part of the description of the offense. Hudson v. State, 73 Miss. 784, 19 So. 965, 1896 Miss. LEXIS 212 (Miss. 1896).

Members of the grand jury are not competent to testify that the sale sought to be proved is or is not the one inquired of by it on which the indictment was found. Newman v. State, 72 Miss. 124, 16 So. 232, 1894 Miss. LEXIS 68 (Miss. 1894).

It is unnecessary to aver the name of the buyer. Riley v. State, 43 Miss. 397, 1870 Miss. LEXIS 51 (Miss. 1870); Lea v. State, 64 Miss. 201, 1 So. 51, 1886 Miss. LEXIS 42 (Miss. 1886).

It is unnecessary to aver partnership in the indictment. Gathings v. State, 44 Miss. 343, 1870 Miss. LEXIS 117 (Miss. 1870).

10. —Sufficiency.

Where an affidavit charged the defendant did wilfully and unlawfully sell one-half pint of liquor and it was amended to charge defendant with unlawful sale of intoxicating liquor, the affidavit sufficiently indicated the offense intended to be charged and the defect was on the face of it, it was amendable and the failure to demur to it constituted a waiver of defect. Perciful v. Holley, 217 Miss. 203, 63 So. 2d 817, 1953 Miss. LEXIS 423 (Miss. 1953).

Where an indictment charged only that the accused did unlawfully sell intoxicating liquor, namely home brew, and there was no allegation that the sale of beer had been outlawed by an election in the county, the indictment was insufficient because no crime was stated. Riley v. State, 212 Miss. 746, 55 So. 2d 447, 1951 Miss. LEXIS 505 (Miss. 1951).

Affidavit was not bad for failure to charge crime in that it did not aver that defendant unlawfully had in his possession intoxicating liquor commonly known as brandy, since it is unlawful under any and all circumstances to have brandy in possession except as to officers of the law who have seized it, and it is unnecessary to charge that defendant had it unlawfully. Mason v. State, 32 So. 2d 140 (Miss. 1947).

Affidavit charging sale of one pint of "intoxicating liquor" held sufficient. Pope v. State, 108 Miss. 706, 67 So. 177, 1914 Miss. LEXIS 262 (Miss. 1914).

Affidavit need only allege facts which constitute the crime. City of Gulfport v. Martin, 96 Miss. 131, 50 So. 502, 1909 Miss. LEXIS 26 (Miss. 1909).

Conviction reversed for failure of record to show affidavit charging crime in justice or circuit court. Woodson v. State, 94 Miss. 370, 48 So. 295, 1908 Miss. LEXIS 43 (Miss. 1908).

It is not necessary for affidavit to allege sale was unlawful. Irby v. State, 91 Miss. 542, 44 So. 801, 1907 Miss. LEXIS 139 (Miss. 1907).

An indictment is good which charges generally a sale of liquor without authority of law. West v. State, 70 Miss. 598, 12 So. 903, 1893 Miss. LEXIS 43 (Miss. 1893).

An indictment is not bad as being double because it charges in the same count the unlawful sale of "vinous and spirituous liquors." Lea v. State, 64 Miss.

201, 1 So. 51, 1886 Miss. LEXIS 42 (Miss. 1886).

11. —After previous conviction.

A proper indictment charging a defendant with a third offense of sale of intoxicating liquors must make specific and express reference to the statute or statutes under which he was previously convicted; otherwise it will not support a judgment of conviction. McGowan v. State, 269 So. 2d 645, 1972 Miss. LEXIS 1231 (Miss. 1972).

Where an indictment which was in three parts, the first of which alleged unlawful possession of intoxicating liquors in March 1937 and a conviction thereof and the second part set out such conviction and alleged that in June 1941 the defendant was again convicted of a similar offense, and the third part alleged that after the two prior convictions, he did, in December 1946 have possession, as aforesaid, that indictment does not properly charge a second or third offense as such. White v. State, 214 Miss. 235, 58 So. 2d 510, 1952 Miss. LEXIS 462 (Miss. 1952).

Where indictment attempting to charge defendant with felonious commission of the act constituting a third offense was void in its entirety for failure to charge his conviction of a first offense as a first offense, and his conviction of a second offense as a second offense, all under the same statute, trial court erred in failing to sustain demurrer thereto and in permitting amendment of indictment so as to charge a first offense; and no effect could be given such indictment under Code 1942, § 2523, authorizing a conviction for the commission of some other offense, the commission of which is necessarily included in the offense with which the defendant is charged in the indictment, since it neither charged a third offense nor any constituent offense. Ainsworth v. State, 206 Miss. 559, 40 So. 2d 298, 1949 Miss. LEXIS 283 (Miss. 1949).

Affidavit is void and judgment of conviction of second offense of possession of intoxicating liquors is invalid when affidavit does not specifically refer to this section, since statute requires that the second and third convictions must be "under this section [Code 1942, § 2613]." Riley v. State, 204 Miss. 562, 37 So. 2d 768, 1948 Miss. LEXIS 389 (Miss. 1948).

Indictment charging that defendant unlawfully possessed intoxicating liquor for the second time in violation of paragraph (b) of this section [Code 1942, § 2613], having once been convicted for possession of intoxicating liquor on a designated date in the circuit court of a specified county, was not invalid for failure to charge specifically that the first prosecution was had under this section [Code 1942, § 2613]. McGowan v. State, 200 Miss. 270, 25 So. 2d 131, 1946 Miss. LEXIS 290 (Miss. 1946).

An indictment under paragraph (c) of this section [Code 1942, § 2613] charging possession of intoxicating liquor after having previously twice been convicted for the same offense, must specifically refer to this section [Code 1942, § 2613]. Rogers v. State, 198 Miss. 495, 22 So. 2d 550, 1945 Miss. LEXIS 220 (Miss. 1945).

An indictment under paragraph (c) of this section, charging possession of intoxicating liquor after having been previously twice convicted for the same offense, was insufficient for failure to allege that the second conviction was on a charge of having intoxicating liquor in defendant's possession after a former conviction. Rogers v. State, 198 Miss. 495, 22 So. 2d 550, 1945 Miss. LEXIS 220 (Miss. 1945).

Omissions in an indictment under paragraph (c) of this section charging possession of intoxicating liquor after having been previously twice convicted for the same offense, of specific reference to this section and of an allegation that defendant's second conviction was on a charge of having intoxicating liquor in his possession after a former conviction, go to the very essence of the offense charged, so that such omissions were not waived by defendant's failure to demur to the indictment. Rogers v. State, 198 Miss. 495, 22 So. 2d 550, 1945 Miss. LEXIS 220 (Miss. 1945).

12. —Separateness of search warrant affidavit.

Recitals in both affidavit for search warrant and the search warrant itself that the possession of whisky by the accused was "in violation of law," were equivalent to recital that such possession was "unlawful." Gilbert v. State, 198 Miss. 175, 21 So. 2d 914, 1945 Miss. LEXIS 181 (Miss. 1945).

Trial and conviction of accused for unlawful possession of intoxicating liquor in the circuit court on an indictment was valid, and fact that the intoxicating liquor in question was found and seized in accused's home under a search warrant issued to the sheriff by a justice of the peace did not place jurisdiction in the justice's court to the exclusion of the circuit court where no affidavit was made before the justice of the peace charging her with unlawful possession of intoxicants, since a charging affidavit is essential to jurisdiction in the justice court. Conner v. State, 196 Miss. 335, 17 So. 2d 527, 1944 Miss. LEXIS 198 (Miss. 1944).

The affidavit for a search warrant is not, and cannot be, a substitute for the affidavit charging the offense of unlawful possession of intoxicating liquor so as to give a justice court jurisdiction of the offense. Conner v. State, 196 Miss. 335, 17 So. 2d 527, 1944 Miss. LEXIS 198 (Miss. 1944).

13. —Where general prohibition laws suspended.

An indictment which charges an unlawful sale of intoxicating liquor in violation of the general prohibition laws fails to charge an indictable offense where the act occurred in a county where those laws had been suspended by an election held under the local option alcoholic beverage control law. Wortham v. State, 219 So. 2d 923, 1969 Miss. LEXIS 1435 (Miss. 1969).

In counties where the general prohibition laws have been suspended through legalization of the sale of alcoholic liquors by an election held under the local option alcoholic beverage control law, in order to charge an unlawful sale the the indictment or affidavit must charge that the local option law is in effect in that county, and sufficient facts to show a violation of one of the provisions of the local option law. Wortham v. State, 219 So. 2d 923, 1969 Miss. LEXIS 1435 (Miss. 1969).

In a county in which the general prohibition laws had been suspended, it was error to permit the amendment of an indictment charging a violation of those laws so as to charge the commission of an offense prohibited under the local option beverage control law. Wortham v. State, 219 So. 2d 923, 1969 Miss. LEXIS 1435 (Miss. 1969).

14. Variance between allegations and proof.

An indictment charging a sale of intoxicating liquors is not sustained by proof of a barter. Elkins v. State, 229 Miss. 323, 90 So. 2d 662, 1956 Miss. LEXIS 612 (Miss. 1956).

Where an indictment charged that the accused unlawfully sold intoxicating liquors, while the state proved that the accused gave the prosecuting witness a gallon of liquor and $1.50 in cash in exchange for a car battery, there was a fatal variance between the indictment and the proof, and the accused was entitled to a peremptory instruction. Elkins v. State, 229 Miss. 323, 90 So. 2d 662, 1956 Miss. LEXIS 612 (Miss. 1956).

Indictment charging sale of intoxicating liquor, not supported by proof of barter. Woodall v. State, 129 Miss. 854, 93 So. 366, 1922 Miss. LEXIS 99 (Miss. 1922).

Conviction for unlawful sale of intoxicating liquor, not set aside because of variance between proof of time for sale and date alleged in indictment. Peebles v. State, 105 Miss. 834, 63 So. 271, 1913 Miss. LEXIS 266 (Miss. 1913).

Fact that under indictment based on this section [Code 1942, § 2613], proof showed also a violation of another section, did not constitute variance and accused was properly sentenced under this section [Code 1942, § 2613]. Taylor v. State, 101 Miss. 857, 58 So. 593, 1912 Miss. LEXIS 19 (Miss. 1912).

One charged with selling "vinous and spirituous liquors" could not be convicted by proof of the sale of beer, which as commonly prepared is a malt liquor. Smith v. State, 94 Miss. 255, 49 So. 113, 1908 Miss. LEXIS 56 (Miss. 1908).

Though it is unnecessary to charge in an indictment to whom the liquor was sold, yet if a sale to two named persons is averred, this becomes essential as descriptive of the offense, and it is a fatal variance if the evidence is of a sale to one only.

Tyler v. State, 69 Miss. 395, 11 So. 25, 1891 Miss. LEXIS 89 (Miss. 1891); Dick v. State, 30 Miss. 631, 1856 Miss. LEXIS 13 (Miss. 1856).

15. Evidence.

16. —Admissibility.

In a prosecution for possession of intoxicating liquor, the trial court erred in overruling defendant's motion to suppress evidence seized during a search of his home, based on his contention that the warrant was defective, where the underlying facts and circumstances portion of the affidavit, stating that a deputy had called the affiant and said that after several observations of defendant over a period of time "he was apparently selling whiskey," was insufficient as a matter of law. Washington v. State, 382 So. 2d 1086, 1980 Miss. LEXIS 1966 (Miss. 1980).

Where the record revealed that all persons who wanted to do business with the defendant were impliedly invited to approach the house in which he was staying along a circular driveway to a point where the defendant met law enforcement officers to ascertain what he could do for them, and where the officers purchased and received from the defendant a bottle of intoxicating liquor but made no search of the person or premises of the defendant, the testimony of the officers was not inadmissible on the ground that the purchase was an illegal search or that their testimony was in effect a method of requiring the defendant to testify against himself. Lyons v. State, 195 So. 2d 91, 1967 Miss. LEXIS 1438 (Miss. 1967).

Where, after prosecuting witness had obtained whisky from the defendant, he and two other witnesses were arrested while driving along the highway and the car searched without a warrant, and the whisky was found by the arresting officer, since the car searched was not the accused's, and he did not have it in his possession, nor was he anywhere near the place where the search was made, he could not complain, upon trial of the charge of unlawfully selling intoxicating liquor, that the whisky introduced in evidence was obtained by an illegal search. Elkins v. State, 229 Miss. 323, 90 So. 2d 662, 1956 Miss. LEXIS 612 (Miss. 1956).

Evidence that defendant's place of business had a reputation of being place where intoxicating liquors were sold was properly excluded in a prosecution for unlawful possession of beer. State v. Sisk, 209 Miss. 174, 46 So. 2d 191, 1950 Miss. LEXIS 377 (Miss. 1950).

Permitting two police officers to testify that defendant was under the influence of intoxicating liquor at the time they searched his car for intoxicating liquor, was reversible error. Patton v. State, 209 Miss. 138, 46 So. 2d 90, 1950 Miss. LEXIS 371 (Miss. 1950).

Where sheriff hid himself near spot which he believed was being used to keep whisky in but without suspecting that defendant rather than someone else would appear, and shortly thereafter defendant appeared with something in his hand and sheriff after arresting him discovered whisky in the bottle, arrest was unlawful and evidence inadmissible. Thomas v. State, 208 Miss. 264, 44 So. 2d 403, 1950 Miss. LEXIS 245 (Miss. 1950).

Where defendant failed to object to search warrant when offered in evidence but did request preemptory instruction, and, after trial, made motion in arrest of judgment, the supreme court will treat the question as though defendant made timely objection. Jenkins v. State, 207 Miss. 281, 42 So. 2d 198, 1949 Miss. LEXIS 338 (Miss. 1949).

Evidence obtained by second search, under original search warrant, is inadmissible against defendant when second search is made after original search had been completed and evidence obtained, and after defendant was arrested, plead guilty and paid fine. Riley v. State, 204 Miss. 562, 37 So. 2d 768, 1948 Miss. LEXIS 389 (Miss. 1948).

Passenger in truck being driven by its owner in compliance with contract of sale of cow and delivery thereof to defendant's home, could not object to the search of the truck cab by deputy sheriff without a search warrant, or to the admission of evidence secured thereby in prosecution for unlawful possession of intoxicating liquor. Smith v. State, 198 Miss. 788, 24 So. 2d 85, 1945 Miss. LEXIS 248 (Miss. 1945).

Where arrest of defendant and the search of her person by a sheriff without a warrant therefor was illegal, evidence that he found on her person a key which fitted the lock of the door to a room in which whisky was found was inadmissible in prosecution for unlawful possession of whisky, notwithstanding that the room was in a house owned by the defendant for which the sheriff had a proper search warrant, where the defendant lived elsewhere. Lewis v. State, 198 Miss. 767, 23 So. 2d 401, 1945 Miss. LEXIS 245 (Miss. 1945).

The admission of evidence in a prosecution for unlawful possession of whiskey that defendant's servant had on former occasions sold whiskey for defendant was not error since the testimony was relevant to show the fact and purpose of the employment and that the possession of the whiskey involved was with defendant's knowledge and consent, and under his direction. Grantham v. State, 190 Miss. 887, 2 So. 2d 150, 1941 Miss. LEXIS 106 (Miss. 1941).

Evidence that accused believed wine in his possession did not contain over four per cent of alcohol, held inadmissible. Lowe v. Jackson, 181 Miss. 296, 179 So. 568, 1938 Miss. LEXIS 71 (Miss. 1938).

Evidence obtained in search by city marshal and private citizen without warrant held properly excluded, although made outside of limits of municipality, where record shows marshal was acting under color of office. State v. Messer, 142 Miss. 882, 108 So. 145, 1926 Miss. LEXIS 135 (Miss. 1926).

Where state's witness obtained whisky from defendant only once and was uncertain about the date, defendant should have been permitted to introduce testimony that sale occurred in another county. Mosley v. State, 107 Miss. 158, 65 So. 124, 1914 Miss. LEXIS 65 (Miss. 1914).

Error to admit evidence that defendant had reputation of being a blind tiger keeper, where she had not placed her reputation in issue. Smothers v. Jackson, 92 Miss. 327, 45 So. 982, 1908 Miss. LEXIS 193 (Miss. 1908).

Under indictment charging giving away liquor in town of D, evidence of giving away liquor outside of the town was inadmissible. Stanley v. State, 89 Miss. 63, 42 So. 284, 1906 Miss. LEXIS 28 (Miss. 1906).

Under indictment charging giving away liquor, books of express company were inadmissible to show shipments of liquor from defendant's employer to parties in the town. Stanley v. State, 89 Miss. 63, 42 So. 284, 1906 Miss. LEXIS 28 (Miss. 1906).

On prosecution for unlawful selling, evidence that defendant kept liquors of other parties on storage subject to their withdrawal at pleasure is immaterial and there was no error in its rejection. Donald v. State, 41 So. 4 (Miss. 1906).

17. —Sufficiency.

Where the state's witnesses testified that in response to their inquiry, the defendant stated that he had a named brand of whisky, giving the price thereof, and that defendant then disappeared but returned shortly with two half pints of whisky, which he delivered to the witnesses, receiving payment therefor, the evidence not only established a sale but was sufficient to warrant the jury in concluding that the defendant was in possession of whisky, and that the two half pints which he delivered to the state's witnesses were taken from the stored whisky which was in his control or charge; the state not being required to prove that defendant's control or possession of the whisky was exclusive, or that the defendant owned the whisky. McLean v. State, 230 Miss. 894, 94 So. 2d 231, 1957 Miss. LEXIS 437 (Miss. 1957).

Where intoxicating liquor was found in an automobile, belonging to the accused's wife, parked upon the property of another, evidence, including undisputed testimony of the property owner that he could not estimate the number of times that the had seen the accused go to and from the parked automobile, and further that when he asked the accused to do something about the car being upon his premises the accused had replied that if the witness got caught the whisky would belong to the accused, was sufficient to sustain the conviction for the unlawful possession of intoxicating liquor. Bolin v. State, 229 Miss. 798, 91 So. 2d 847, 1957 Miss. LEXIS 327 (Miss. 1957).

Where it was equally probable that a man found in a drunken condition upon the premises supposedly owned by the accused was in responsible possession of the intoxicating liquor found therein, and it was not shown when the accused had been on the premises in relation to the time the intoxicating liquor was found, the state failed to prove beyond a reasonable doubt that the accused was guilty of responsible possession of the liquor. Shumpert v. State, 229 Miss. 730, 91 So. 2d 745, 1957 Miss. LEXIS 320 (Miss. 1957).

Evidence indicating a beaten path from turkey pen going by place where whisky was found, and finding of ten empty kegs in toolhouse on defendant's property, was too remote and inadequate to submit to jury. Revette v. State, 209 Miss. 860, 48 So. 2d 511, 1950 Miss. LEXIS 450 (Miss. 1950).

The prosecution for unlawful possession of intoxicating liquors, the so-called "beaten path doctrine" should be confined in its application to route which terminates at or near contraband, coupled with a limited or no access to premises by others, and to other relevant circumstances which might justify jury in finding possession. Revette v. State, 209 Miss. 860, 48 So. 2d 511, 1950 Miss. LEXIS 450 (Miss. 1950).

Evidence that no intoxicating liquor was found in the room where defendant was seated and absence of evidence by the state that defendant exercised any kind of possession or control over the liquor found, warranted reversal of conviction of unlawful possession of intoxicating liquor, since mere presence in the place was insufficient to establish guilt. Baylis v. State, 209 Miss. 335, 46 So. 2d 796, 1950 Miss. LEXIS 395 (Miss. 1950).

Testimony that defendant was first seen lying down about 6 or 8 feet from the still, there being no direct testimony of actual participation in the operation of the still, was insufficient upon which to form the basis of a charge of unlawful control and possession. Ratcliff v. State, 32 So. 2d 151 (Miss. 1947).

Evidence that officers found in defendant's home one jar of apple juice and a jar containing about a half gallon of "home-brew" was insufficient to sustain conviction of unlawful possession of intoxicating liquor under this section [Code 1942, § 2613], where there was no competent evidence as to the ingredients of the latter liquid or that it was intoxicating. Turner v. State, 198 Miss. 839, 24 So. 2d 84, 1945 Miss. LEXIS 258 (Miss. 1945).

Mere testimony by one witness that he smelled the "home-brew" was insufficient to constitute an affirmative statement that it was intoxicating liquor. Turner v. State, 198 Miss. 839, 24 So. 2d 84, 1945 Miss. LEXIS 258 (Miss. 1945).

However, if the officers had testified that the "home-brew" was whisky or some other beverage commonly known to be intoxicating, the state would not have been required to prove either its alcoholic content or that it would intoxicate if drunk to excess. Turner v. State, 198 Miss. 839, 24 So. 2d 84, 1945 Miss. LEXIS 258 (Miss. 1945).

Evidence was insufficient to sustain conviction of unlawful possession of whisky found in a room to which defendant had no access even though defendant occupied one of the other rooms of the house, where there was no evidence that defendant had any connection with the whisky. Lewis v. State, 198 Miss. 767, 23 So. 2d 401, 1945 Miss. LEXIS 245 (Miss. 1945).

Testimony as to defendant's statement at the time the enforcement officer made the search of defendant's premises for intoxicating liquors, to the effect that the defendant asked the officer to give him a little time, that he had about a thousand dollars worth of liquor and he could dispose of it within an hour, and requesting that the officer allow another person to plead quilty to the offense, if believed to be true, was sufficient to show that the liquor belonged to him and was in his possession and constituted ample evidence to support conviction. Smith v. State, 187 Miss. 96, 192 So. 436, 1939 Miss. LEXIS 100 (Miss. 1939).

Evidence, in a prosecution under this section, that the defendant admitted that the liquor was his, and stated that "if I ever get out of this I never intend to sell any more liquor," in response to the question of the sheriff, coupled with the circumstance that the whiskey was found on defendant's premises constituted sufficient reason for submitting the case to the jury. Ross v. State, 185 Miss. 378, 189 So. 526, 1939 Miss. LEXIS 190 (Miss. 1939).

Conviction based on mere suspicion, reversed. Benoit v. Bay St. Louis, 103 Miss. 218, 60 So. 137, 1912 Miss. LEXIS 156 (Miss. 1912).

Conviction for sale of intoxicating liquors, held sustained by proof of sale of both alcoholic and malt liquors without proof that they are intoxicating. Edwards v. Gulfport, 95 Miss. 148, 49 So. 620, 1909 Miss. LEXIS 285 (Miss. 1909).

There need not be proof of payment, a sale on credit is within the statute. Riley v. State, 43 Miss. 397, 1870 Miss. LEXIS 51 (Miss. 1870).

Where the indictment charges the prisoner with selling rum, whisky, brandy and gin, proof that he sold any one of them in violation of law is sufficient. Murphy v. State, 28 Miss. 637, 1855 Miss. LEXIS 6 (Miss. 1855).

18. Instructions.

In a prosecution for the sale of intoxicating liquors, since defendant's admission, upon cross-examination, that on the day prior to the date of the alleged offense he had been convicted of possessing liquor went to his credibility as a witness, and the loss or impairment of credibility affected both defendant's character and reputation, the trial court committed reversible error in refusing to instruct that the jury was required to believe that the defendant made the particular sale of liquor, and was not warranted in convicting him for the sale merely because of his former conviction of possessing liquor and the probable attendant character and reputation arising therefrom. Hassell v. State, 229 Miss. 824, 92 So. 2d 194, 1957 Miss. LEXIS 330 (Miss. 1957).

Instruction in a prosecution under this section [Code 1942, § 2613] that jury should find defendant guilty if they found that defendant was guilty "as charged in the indictment", constituted reversible error because the jurors themselves were referred to, and required to interpret the affidavit, instead of being informed by the court as to the elements of the crime involved in the law violation charged. Ellis v. State, 203 Miss. 330, 33 So. 2d 837, 1948 Miss. LEXIS 273 (Miss. 1948).

State's main instruction that defendant must have "wilfully" possessed the liquor is not erroneous as failing to charge that he "knowingly" possessed the liquor, since "wilfully" includes "knowingly". Mason v. State, 32 So. 2d 140 (Miss. 1947).

Refusal of requested instruction submitting to jury the factual issue whether the malt liquor or beer contained over the maximum alcoholic content of 4 per cent by weight, constituted reversible error, where the testimony, although showing that the liquor or beer was intoxicating, did not disclose what percentage of alcohol by weight it contained. Hall v. State, 199 Miss. 560, 24 So. 2d 780, 1946 Miss. LEXIS 224 (Miss. 1946).

While an instruction in prosecution for having intoxicating liquor in one's possession, which undertakes to define the offense, should use the word "unlawfully," in view of the fact that under some conditions certain intoxicating liquors may be lawfully possessed, omission to do so does not constitute reversible error where the intoxicating liquor in question is "whisky." Gilbert v. State, 198 Miss. 175, 21 So. 2d 914, 1945 Miss. LEXIS 181 (Miss. 1945).

In prosecution for unlawful possession of wine, omission of word "unlawful" in instruction to jury held not prejudicial to defendant where bottle containing wine tended to show that it was not homemade and there was no evidence suggesting that it was homemade wine, since possession of wine containing more than fifteen per cent of alcohol by weight was necessarily unlawful. Forbert v. State, 179 Miss. 66, 174 So. 248, 1937 Miss. LEXIS 15 (Miss. 1937).

Instruction in liquor prosecution that law took judicial notice that whiskey was intoxicating held not to constitute substantial error. Norris v. State, 143 Miss. 365, 108 So. 809, 1926 Miss. LEXIS 273 (Miss. 1926).

Where defense was that the intoxicant was sold as a medicine, instruction was erroneous which ignored the defense and told the jury that if the defendant asked no question as to whether the purchaser wanted to use the bitters as a beverage or a medicine, he was guilty. Goode v. State, 87 Miss. 495, 40 So. 12, 1905 Miss. LEXIS 168 (Miss. 1905).

It is not error to refuse an instruction submitting to the jury the question whether the homemade wine sold by the accused was or was not an intoxicant. Reyfelt v. State, 73 Miss. 415, 18 So. 925, 1895 Miss. LEXIS 114 (Miss. 1895).

19. Repeating offense.

Where a docket showed that defendant had previously pleaded guilty to a charge of unlawful possession of beer, not shown to be of an alcoholic content greater than four per cent by weight, this did not disclose conviction of a crime and could not be used as the basis for sentencing the accused as a second offender of unlawful possession of intoxicating liquors. Brown v. State, 222 Miss. 863, 77 So. 2d 694, 1955 Miss. LEXIS 678 (Miss. 1955).

This section [Code 1942, § 2613] does not impose the graduated penalties merely for successive or repeated offenses and unless the accused is charged as a subsequent offender, any number of offenses may be treated as first offenses. Miles v. State, 51 So. 2d 214 (Miss. 1951).

A second offense within the meaning of this section [Code 1942, § 2613] must have been committed after the conviction of the prior offense, and a third offense after the conviction of the second offense. Miles v. State, 51 So. 2d 214 (Miss. 1951).

Before there can be a conviction of second offense of unlawful possession of intoxicating liquor, it is absolutely necessary that former conviction or plea of guilty be proven by state, and this is best shown by introduction of judgment of conviction although judgment may show dismissal of other charges against defendant. Outlaw v. State, 208 Miss. 13, 43 So. 2d 661, 1949 Miss. LEXIS 402 (Miss. 1949).

In prosecution for second offenses, as to unlawful possession of intoxicating liquors, it is proper to show first conviction by record of first conviction identified by justice of peace who succeeded one who tried defendant, as succeeding justice is custodian of record and proper witness to identify it and all docket entries made by his predecessor. Outlaw v. State, 208 Miss. 13, 43 So. 2d 661, 1949 Miss. LEXIS 402 (Miss. 1949).

Affidavit is void and judgment of conviction of second offense of possession of intoxicating liquors is invalid when affidavit does not specifically refer to this section [Code 1942, § 2613], since statute requires that the second and third convictions must be "under this section [Code 1942, § 2613]." Riley v. State, 204 Miss. 562, 37 So. 2d 768, 1948 Miss. LEXIS 389 (Miss. 1948).

The issue as to a prior conviction is not whether the accused was therein properly convicted, but whether as an affirmative matter he was finally convicted. Vincent v. State, 200 Miss. 423, 27 So. 2d 556, 1946 Miss. LEXIS 305 (Miss. 1946).

Authentication by a justice of the peace in form substantially that provided by Code 1942, § 1725, is sufficient evidence of prior conviction if the authenticated record shows former charge, issuance of warrant, trial, plea of guilty, fine and payment of fine; it is not necessary to introduce a complete transcript as on appeal from the first conviction. Vincent v. State, 200 Miss. 423, 27 So. 2d 556, 1946 Miss. LEXIS 305 (Miss. 1946).

Conviction as a second offender hereunder is not precluded by the two year statute of limitations by reason of the fact that the prior conviction charged occurred more than two years prior to the indictment therefor, since the limitation applies solely to prosecutions and does not operate to recast the status of a defendant as a prior offender. McGowan v. State, 200 Miss. 270, 25 So. 2d 131, 1946 Miss. LEXIS 290 (Miss. 1946).

Conviction as a second offender under this statute may not be predicated upon a prior conviction under a city ordinance. Trivillion v. State, 195 Miss. 308, 15 So. 2d 285, 1943 Miss. LEXIS 141 (Miss. 1943).

Conviction of defendant for an offense hereunder as a second offender could not stand, although the jury necessarily found the defendant guilty of the subsequent offense and therefore in any event punishable thereunder. Trivillion v. State, 195 Miss. 308, 15 So. 2d 285, 1943 Miss. LEXIS 141 (Miss. 1943).

Notwithstanding the repeal of the former statute on this subject by § 2, Code 1930, with respect to the question of gradation of punishment for repeating offenders, such former statute must be considered by way of aid to a proper construction or interpretation of this section [Code 1942, § 2613] which took its place. Millwood v. State, 190 Miss. 750, 1 So. 2d 582, 1941 Miss. LEXIS 91 (Miss. 1941), aff'd, 6 So. 2d 619 (Miss. 1942).

When the procedure seeks to hold the accused as a repeating offender, it must be charged in the affidavit or indictment and shown by the proof that previously to the commission of the offense then being prosecuted, the accused had been convicted of a distinct prior offense or offenses under the statute, as against the contention that this section [Code 1942, § 2613] now requires for a felony charge that there shall only have been two previous convictions, even though the three offenses may have been committed on the same day and before any conviction for either of them. Millwood v. State, 190 Miss. 750, 1 So. 2d 582, 1941 Miss. LEXIS 91 (Miss. 1941), aff'd, 6 So. 2d 619 (Miss. 1942).

Where the prosecution sought to charge the defendant with a felony grounded upon a third offense hereunder, and the proof failed to show two distinct prior convictions before the offense for which he was then being prosecuted, the conviction would be reversed and remanded in its entirety rather than a reversal only as to the felony sentence and a remand for the proper sentence as a misdemeanor. Millwood v. State, 190 Miss. 750, 1 So. 2d 582, 1941 Miss. LEXIS 91 (Miss. 1941), aff'd, 6 So. 2d 619 (Miss. 1942).

Evidence insufficient to show conviction of prior offenses under statute. Williams v. State, 125 Miss. 347, 87 So. 672, 1921 Miss. LEXIS 129 (Miss. 1921).

Indictment properly set forth the two former convictions and records thereof were admissible. Robinson v. State, 109 Miss. 284, 68 So. 249, 1915 Miss. LEXIS 149 (Miss. 1915).

First offense must have been under this statute to authorize conviction for second offense. Boroum v. State, 105 Miss. 887, 63 So. 297, 1913 Miss. LEXIS 272 (Miss. 1913).

20. Punishment.

Where the maximum permissible sentence is three months, a 90 day sentence which will run during February is improper. Warbington v. State, 234 Miss. 743, 107 So. 2d 578, 1958 Miss. LEXIS 545 (Miss. 1958).

A defendant, represented by brother of the judge, who gave the defendant a maximum penalty on conviction of the unlawful sale of intoxicating liquor, had been denied a fair and impartial trial. Barnes v. State, 220 Miss. 248, 70 So. 2d 920, 1954 Miss. LEXIS 433 (Miss. 1954).

Where defendant pleaded guilty to first offense of possession of intoxicating liquors, a misdemeanor, at a term of court which expired without imposition of sentence and the court thereafter sentenced defendant for confinement of two years on the mistaken belief that defendant was convicted as third offender, he was not entitled to a habeas corpus since the custody by the sheriff was proper to the extent that the defendant was made answerable to the court in further proceedings to impose sentence as for the misdemeanor. White v. State, 214 Miss. 235, 58 So. 2d 510, 1952 Miss. LEXIS 462 (Miss. 1952).

Subdivision (b), in failing to fix a maximum fine, is incomplete and brings into effect Code 1942, § 2562, fixing a maximum fine of $500 for misdemeanors where no other statute prescribes penalty. Jenkins v. State, 207 Miss. 281, 42 So. 2d 198, 1949 Miss. LEXIS 338 (Miss. 1949).

Where fine greater than that permitted by Code 1942, § 2562, providing for maximum penalties in misdemeanors was imposed for violation of subdivision (b) of this section [Code 1942, § 2613], supreme court, upon reversal, would remand cause to trial court for imposition of sentence. Jenkins v. State, 207 Miss. 281, 42 So. 2d 198, 1949 Miss. LEXIS 338 (Miss. 1949).

A judgment imposing a fine of $500 and sentence of 120 days' imprisonment on conviction of unlawful possession of intoxicating liquors was improper, but, it being apparent that the trial court had intended to fix the maximum penalty but exceeded it by one month, the supreme court reduced the sentence to that authorized by the statute, leaving the fine standing and fixing the imprisonment at three months. Crosby v. State, 8 So. 2d 464 (Miss. 1942).

Under statute providing maximum imprisonment for possession of intoxicating liquor, "month" meant calendar month, in computing which, time must be reckoned by looking at calendar and not by counting days. Where beginning is not coincident with first day of calendar month, month is computed to day numerically corresponding thereto in following month less one, if following month has so many days, and if not to last day thereof. Langley v. State, 154 So. 544 (Miss. 1934).

Where bail bond required accused to surrender to sheriff within one week after judgment of affirmance by supreme court was certified to circuit court, and suggestions of error in affirmance were overruled June 5, accused's sentence of ninety days would not include month of February, and was not invalid as exceeding maximum of three calendar months. Langley v. State, 154 So. 544 (Miss. 1934).

Sentence imposing fine and jail term on conviction for selling liquor, in accordance with law later held unconstitutional, will be set aside. Thomas v. State, 150 Miss. 504, 117 So. 119, 1928 Miss. LEXIS 162 (Miss. 1928).

Accused tried for first offense cannot be imprisoned for 6 months under Laws 1912, ch. 214. Gaston v. State, 107 Miss. 484, 65 So. 563, 1914 Miss. LEXIS 112 (Miss. 1914).

Bond for good behavior may be required of one convicted third time of violation of liquor law. Caldwell v. State, 87 Miss. 420, 39 So. 896, 1905 Miss. LEXIS 148 (Miss. 1905).

Fine of $200 and imprisonment for 3 months in county jail for violation of local option act, not excessive. Haynes v. State, 23 So. 182 (Miss. 1898).

21. Former acquittal or conviction.

Where the record in a criminal proceeding charging the defendant with the unlawful sale of intoxicating liquors showed a confusion of jurisdiction as to whether the trial magistrate acted as a police justice or as an ex officio justice of the peace, the conviction could not be sustained since because of such confusion the defendant would not be in a position to make a plea of former conviction or former acquittal against a further prosecution for violation either of the city ordinance or of the state laws. Wright v. Belzoni, 188 Miss. 334, 194 So. 919, 1940 Miss. LEXIS 33 (Miss. 1940).

To avail of a former acquittal for unlawful retailing, the record must be introduced and the identity of the offense shown by evidence aliunde. Brown v. State, 72 Miss. 95, 16 So. 202, 1894 Miss. LEXIS 62 (Miss. 1894).

22. Appeal.

Upon an appeal from a conviction of unlawful possession of intoxicating liquor, defendant's contention, made for the first time in the supreme court, that the circuit court had no jurisdiction on an appeal from a justice of the peace court because there was no certified copy of the proceedings had in the justice of the peace court could not avail defendant whose only objection made to the transcript at the time of the trial was that it was not under seal by the justice of the peace. Jones v. State, 230 Miss. 887, 94 So. 2d 234, 1957 Miss. LEXIS 436 (Miss. 1957), overruled, Mattox v. State, 243 Miss. 402, 137 So. 2d 920, 1962 Miss. LEXIS 356 (Miss. 1962).

Where defendant convicted under this section [Code 1942, § 2613] perfects an appeal from a justice court to circuit court, and on return day, defaults, the circuit court may dismiss such appeal and order a writ of procedendo to the lower court without determining validity of the proceedings. Hegwood v. State, 208 Miss. 517, 44 So. 2d 850, 1950 Miss. LEXIS 268 (Miss. 1950).

On appeal from conviction of unlawful possession of intoxicating liquor all supreme court can grant defendant is new trial where evidence against him was so lacking in weight that court is justified in reversing case and defendant failed to ask for directed verdict in lower court at end of all evidence for both sides but incorporation in motion for new trial ground that verdict of jury was against overwhelming weight of evidence. Faust v. State, 43 So. 2d 379 (Miss. 1949).

The right of a defendant, convicted of unlawfully possessing intoxicating liquor, to appeal upon the record, and to stand thereon, was not affected by his failure to give timely notice to the court reporter to transcribe the notes of the evidence, where the transcript of the testimony was nevertheless sent up with the record, and he filed the proper bond; and such omission, regardless of its effect upon the right of the appellant to avail of the reporter's transcript, did not justify a summary dismissal of his appeal. Redmond v. McComb, 192 Miss. 61, 4 So. 2d 494, 1941 Miss. LEXIS 8 (Miss. 1941).

23. Miscellaneous.

Forfeiture applies when the prohibition law is violated using a vehicle for concealing or transporting of liquor in excess of 6 gallons; the burden is upon the State to prove that the forfeiture comes within the statute imposing liability by a preponderance of the evidence. Thus, an automobile which was used by the defendant to transport more than 6 gallons of intoxicating liquor into a "dry" county, was subject to forfeiture following the defendant's conviction for unlawful possession of intoxicating liquor in violation of this section. Mississippi State Tax Com. v. One (1) 1984 Black Mercury Grand Marquis, 568 So. 2d 707, 1990 Miss. LEXIS 564 (Miss. 1990).

In determining whether a juror is "disqualified" within the meaning of § 13-5-67 when he or she has withheld information or misrepresented material facts on voir dire examination, the test is whether the juror withheld substantial information or misrepresented material facts in the face of a clearly worded question which was relevant to the case at bar. Voir dire examination is often the most crucial crucible in forging the primary instrument of justice-the fair and impartial jury. When offering challenges for cause and challenges peremptory, parties and their lawyers must rely on the objective candor and responsiveness of prospective jurors, and nothing turns on who asks the question, so long as it was clearly worded. Following a jury's verdict, where a party shows that a juror withheld substantial information or misrepresented material facts, and where a full and complete response would have a provided a valid basis for challenge for cause, the trial court must grant a new trial; prejudice is presumed. Where, as a matter common experience, a full and correct response would have provided the basis for a peremptory challenge, not rising to the dignity of a challenge for cause, the courts have greater discretion, though a discretion that should always be exercised against the backdrop of the duty to secure to each party trial before a fair and impartial jury. Thus, in a prosecution for felony sale of alcoholic and intoxicating beverages, the circuit court's action in removing a juror was within the scope of its authority where the juror failed to respond on 3 separate occasions during voir dire to defense counsel's questions as to whether any prospective juror or any "relative or member of the juror's immediate family" had been involved in a criminal proceeding, and the juror's husband had 2 liquor-related criminal convictions. Myers v. State, 565 So. 2d 554, 1990 Miss. LEXIS 294 (Miss. 1990).

A person charged with unlawful possession of intoxicating liquor need not wait until he has actually been fined or committed to jail before he can exercise his rights to contest the constitutionality of discrimination which he alleges has been practiced against him, for the controlling question is whether he has sustained or is immediately in danger of sustaining some direct injury as the result of the enforcement of a statute he contends is illegal. State v. Wood, 187 So. 2d 820, 1966 Miss. LEXIS 1356 (Miss. 1966).

In a prosecution for unlawful possession of intoxicating liquors, where defendant moved that the jury panel be quashed on the ground of prejudice and showed that one of the jurors was related to the sheriff and a state witness, the circuit court committed no error in disposing of the motion by dismissing the juror. Smith v. State, 219 Miss. 741, 69 So. 2d 837, 1954 Miss. LEXIS 381 (Miss. 1954).

Overruling of motion to withdraw plea of guilty after conviction of unlawful possession of intoxicating liquor and to enter plea of not guilty was proper where motion did not allege defendant was innocent of the offense charged or any facts upon which innocence could be assumed or a legal defense predicated. Edwards v. State, 209 Miss. 325, 46 So. 2d 790, 1950 Miss. LEXIS 392 (Miss. 1950).

One accused of unlawful possession of intoxicating liquor did not come within the protection of Code 1942, §§ 2634 to 2638 inclusive, on the theory that she was ill and that her attending physician had prescribed whisky as a stimulant, where physician issued no written prescription and it did not appear where or from whom accused obtained the whisky. Conner v. State, 196 Miss. 335, 17 So. 2d 527, 1944 Miss. LEXIS 198 (Miss. 1944).

A provision of statute permitting sale of intoxicating liquor under certain conditions, to be effective only in county electing to come under it, is not unconstitutional as delegation of legislative power as applied to prosecution under law allegedly repealed thereby. Stewart v. State, 179 Miss. 31, 174 So. 579, 1937 Miss. LEXIS 22 (Miss. 1937).

Eighteenth amendment and Volstead Act do not supersede or abrogate existing state prohibition law. Meriwether v. State, 125 Miss. 435, 87 So. 411, 1921 Miss. LEXIS 94 (Miss. 1921).

A proceeding for the seizure and destruction of intoxicating liquors unlawfully kept can be instituted only before a justice of the peace, who is required to destroy all liquor so seized for which no claim is made. Holberg Mercantile Co. v. State, 95 Miss. 21, 48 So. 622, 1909 Miss. LEXIS 231 (Miss. 1909).

Sale of intoxicating liquor disguised under unusual and unfamiliar labels, not encouraged by courts. Bacot v. State, 94 Miss. 225, 48 So. 228, 1908 Miss. LEXIS 38 (Miss. 1908).

Every sale without license presumed in violation of law. Goode v. State, 87 Miss. 495, 40 So. 12, 1905 Miss. LEXIS 168 (Miss. 1905).

II. UNDER FORMER LAW.

24. Advertising of liquors prohibited.

Former § 97-31-1 was an unconstitutional infringement of commercial free speech. Dunagin v. Oxford, 701 F.2d 335, 1983 U.S. App. LEXIS 29731 (5th Cir. Miss. 1983).

Mississippi's intrastate liquor advertising ban, former §§ 97-31-1 et seq., violated Mississippi Media Businesses' First Amendment guaranty of freedom of speech, where the law did little to directly advance the government's interest of promoting health and safety for Mississippi residents, in light of uncontradicted evidence that Mississippi residents were literally inundated with liquor advertisements from sources originating outside the state. Lamar Outdoor Advertising, Inc. v. Mississippi State Tax Com., 701 F.2d 314, 1983 U.S. App. LEXIS 29732 (5th Cir. Miss. 1983).

RESEARCH REFERENCES

ALR.

Operation and effect, in dry territory, of general state statute making sale or possession for sale of intoxicating liquor, without a license, an offense. 8 A.L.R.2d 750.

Provision as to sale of liquor to women as affecting validity of regulatory statute. 9 A.L.R.2d 541.

Evidence of identity for purposes of statute as to enhanced punishment in case of prior conviction. 11 A.L.R.2d 870.

Validity and construction of measure prohibiting retail alcoholic beverage seller from furnishing free food or drink. 66 A.L.R.2d 758.

Homicide: Criminal liability for death resulting from unlawfully furnishing intoxicating liquor or drugs to another. 32 A.L.R.3d 589.

Construction of statute or ordinance making it an offense to possess or have alcoholic beverages in opened package in motor vehicle. 35 A.L.R.3d 1418.

Chronological or procedural sequence of former convictions as affecting enhancement of penalty under habitual offender statutes. 7 A.L.R.5th 263.

Am. Jur.

45 Am. Jur. 2d, Intoxicating Liquors §§ 1 et seq.

CJS.

48 C.J.S., Intoxicating Liquors §§ 311, 313, 324, 380.

§ 97-31-29. Sale, possession, etc. of intoxicating beverages prohibited; agent or assistant of seller or buyer punished.

If any person shall act as agent or assistant of either the seller or purchaser, in effecting the sale of any liquor, bitters or drinks, the sale of which is forbidden under this chapter, he shall be guilty of a misdemeanor and on conviction shall be fined not less than one hundred dollars, or be imprisoned in the county jail not less than thirty days, or both.

HISTORY: Codes, 1892, § 1604; 1906, § 1771; Hemingway's 1917, § 2103; 1930, § 1990; 1942, § 2629; Laws, 1890, p. 71; Laws, 1908, ch. 115.

Cross References — Unlawful possession of alcoholic beverages or related personal property, see § 67-1-17.

Accessories before the fact, see § 97-1-3.

Solicitation of unlawful orders for intoxicating liquors, see § 97-31-49.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

ANALYSIS

1. Validity.
2. Construction and application.

1. Validity.

This section [Code 1942, § 2629] is constitutional. Sinclair v. State, 87 Miss. 330, 39 So. 522, 1905 Miss. LEXIS 124 (Miss. 1905).

2. Construction and application.

Accused who was not acting as agent for seller did not violate law by aiding purchaser. Harris v. State, 113 Miss. 457, 74 So. 323, 1917 Miss. LEXIS 121 (Miss. 1917).

Fact that accused purchased liquor jointly with another did not alter nature of the offense. Simmons v. State, 102 Miss. 605, 59 So. 849, 1912 Miss. LEXIS 96 (Miss. 1912).

Where accused is not charged with selling liquor, the place where sale was actually consummated is immaterial. Powell v. State, 96 Miss. 608, 51 So. 465, 1910 Miss. LEXIS 181 (Miss. 1910).

Where accused wrote his name on blank piece of paper and delivered it to others who gave it to the express agent with $3.50 and received whisky from the agent, this constituted sale by accused though no word had passed between any of parties. Bennett v. State, 87 Miss. 803, 40 So. 554, 1905 Miss. LEXIS 214 (Miss. 1905).

Indictment charging defendant with having assisted a third person to buy whisky in a place outside the state charged no offense. Sinclair v. State, 87 Miss. 330, 39 So. 522, 1905 Miss. LEXIS 124 (Miss. 1905); Anderson v. State, 109 Miss. 521, 68 So. 770, 1915 Miss. LEXIS 188 (Miss. 1915).

Person engaged in liquor business in Louisiana who took orders and collected purchase-price for whisky in Mississippi which subsequently was delivered to express company in Louisiana for transportation and delivery, violated the statute. Sinclair v. State, 87 Miss. 330, 39 So. 522, 1905 Miss. LEXIS 124 (Miss. 1905).

RESEARCH REFERENCES

CJS.

48 C.J.S., Intoxicating Liquors § 339.

§ 97-31-31. Sale, possession, etc. of intoxicating beverages prohibited; connivance by owner, occupant, etc. of house or boat where liquor kept.

Every owner, lessee, sub-lessee, or occupant of any boat, house, outhouse, or other building, or tenement in which the liquors described in Section 97-31-27 are unlawfully kept, sold, bartered, or given away, shall be guilty of a misdemeanor, if he shall connive therein, directly or indirectly, in any manner, or shall fail to give information thereof when he knows of the same, or of circumstances indicating the same, to some conservator of the peace. Proof of an unlawful keeping of such liquors, or of an unlawful sale, barter, or giving away thereof, in such building, shall constitute presumptive evidence of a violation of this section by any owner, lessee, sub-lessee, or occupant who has not given the information herein required. Any person convicted of violating the provisions of this section shall be fined not less than one hundred dollars, nor more than five hundred dollars, or be imprisoned in the county jail not less than one week nor more than three months, or by both such fine and imprisonment.

HISTORY: Codes, 1857, ch. 20, art. 21; 1871, § 2694; 1880, § 1117; 1892, § 1598; 1906, § 1764; Hemingway's 1917, § 2100; 1930, § 1987; 1942, § 2626.

Cross References — Unlawful possession of alcoholic beverages or related personal property, see § 67-1-17.

Temporary injunction against nuisance, see § 95-3-11.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

The trial and acquittal of the owner on the charge of unlawfully selling, is not a bar to a subsequent prosecution for conniving at a sale, although both prosecutions be predicated on the same sale. Carroll v. State, 80 Miss. 349, 31 So. 742, 1902 Miss. LEXIS 245 (Miss. 1902).

On the trial of a storekeeper for conniving at a sale by his clerk, it being shown that the clerk sold what appeared to be whisky, evidence that the clerk besought a witness to withhold the transaction from the grand jury is admissible, as it tends to show that the liquor sold was whisky, although the sale did not occur in the presence or hearing of defendant. Carroll v. State, 80 Miss. 349, 31 So. 742, 1902 Miss. LEXIS 245 (Miss. 1902).

Proof of sale by another constitutes presumptive evidence that the owner connived thereat, if he failed to give information thereof to some conservator of the peace. Carroll v. State, 80 Miss. 349, 31 So. 742, 1902 Miss. LEXIS 245 (Miss. 1902).

RESEARCH REFERENCES

CJS.

48 C.J.S., Intoxicating Liquors § 376, 377 and 379.

§ 97-31-33. Sale, possession, etc. of intoxicating beverages prohibited; exceptions; records to be kept by carrier; exceptions may be relied upon as defense.

Nothing in this chapter shall make it unlawful:

(a) For any minister or priest of any religious sect or denomination in actual charge of a church, religious order or congregation to order, purchase, and have shipped, transported and delivered, wine for sacramental purposes, nor for any common carrier to ship, transport, carry or deliver wine for said purposes to any such minister or priest, nor for any such minister or priest to have, receive, control or possess wine for sacramental purposes, but the said wine shall remain in the possession of such minister or priest save when the wine is being administered in the sacramental service or in the service in commemoration of the Lord's Supper.

(b) For any practicing physician, who is the sole proprietor of a drugstore, any licensed druggist, wholesale druggist, pharmacist, manufacturer, college, medical or pharmaceutical college, public or charity hospital, or state institution or chemists or bacteriologists, to order, purchase and have shipped and delivered, or to have, receive and possess, nor for any common carrier to transport, ship and deliver to any of said persons, firms, corporations or institutions grain or pure alcohol for any purpose now permitted by the laws of the state, to any such person, college, hospital, or institution, and to be used only for medicinal, mechanical, and scientific purposes not contravening in any way the prohibition laws of this state. Nor for any dentist to order, purchase, nor for any dentist to have, control, receive and possess alcohol as is herein provided in the case of a physician.

(c) But, records shall be kept by the carrier, or delivering party, of such wines for sacramental purposes, and of all such alcohol and statement thereof shall be filed with the clerk of the circuit court as provided by law.

(d) The exceptions defined in this section may be relied upon as a defense and the burden of establishing the same shall be upon the person claiming the benefits thereof.

HISTORY: Codes, Hemingway's 1921 Supp. §§ 2163m, 2163n; 1930, §§ 2012, 2013; 1942, §§ 2651, 2652; Laws, 1918, ch. 189.

Cross References — Prohibition of alcoholic beverages except as authorized by law, see § 67-1-9.

Unlawful possession of alcoholic beverages or related personal property, see § 67-1-17.

Sale of certain alcoholic preparations and extracts, see §§ 97-31-5 et seq.

Lawful ownership of distillery or still, see § 97-31-23.

Sales by druggists, see §§ 97-31-37 through 97-31-45.

Another section derived from same 1942 code sections, see § 99-7-29.

JUDICIAL DECISIONS

1. In general.

In charging offense of unlawful possession of wine, it is not necessary to negative exception of homemade wine, and state is not required to prove that wine was not homemade wine used for domestic and household purposes only. Forbert v. State, 179 Miss. 66, 174 So. 248, 1937 Miss. LEXIS 15 (Miss. 1937).

Indictment charging unlawful possession of still held not demurrable because it did not show it was a whisky still. Powe v. State, 176 Miss. 455, 169 So. 763, 1936 Miss. LEXIS 144 (Miss. 1936).

Indictment for possession need not negative exceptions in statute. Frazier v. State, 141 Miss. 18, 106 So. 443, 1925 Miss. LEXIS 227 (Miss. 1925).

An indictment for unlawful possession of a still must negative exceptions. State v. Speaks, 132 Miss. 159, 96 So. 176, 1923 Miss. LEXIS 46 (Miss. 1923); Dawsey v. State, 136 Miss. 18, 100 So. 526, 1924 Miss. LEXIS 105 (Miss. 1924); State v. Clark, 145 Miss. 207, 110 So. 447, 1926 Miss. LEXIS 15 (Miss. 1926).

RESEARCH REFERENCES

Am. Jur.

45 Am. Jur. 2d, Intoxicating Liquors §§ 1 et seq.

§ 97-31-35. Sale, possession, or use of alcoholic beverages within facilities; employee knowledge; punishment for violations.

(1) It is unlawful for any person to sell within, bring to, or be in possession of, in any correctional facility or convict camp within the state or any county, municipal or other jail within the state, except as authorized by this chapter, any alcoholic beverage including any vinous, spirituous, malt or intoxicating liquor, or intoxicating drinks which if drunk to excess will produce intoxication.

(2) It is unlawful for any person who is the keeper or officer in charge of the facility, camp or jail, or who is employed in or about the facility, camp or jail to knowingly permit any alcoholic beverage to be sold, possessed or used therein contrary to law.

(3) Any person who violates the provisions of this section and is convicted shall be fined up to Ten Thousand Dollars ($10,000.00) and be punished by imprisonment for not less than two (2) years, nor more than five (5) years; and that person will not be eligible for probation, parole, suspension of sentence, earned time allowance or other reduction of sentence.

HISTORY: Codes, 1857, ch. 20, art. 22; 1871, § 2695; 1880, § 1118; 1892, § 1599; 1906, § 1765; Hemingway's 1917, § 2101; 1930, § 1988; 1942, § 2627; Laws, 1998, ch. 391, § 4, eff from and after July 1, 1998.

Cross References — Offense of furnishing offenders alcoholic beverages, controlled substances, narcotic drugs, or weapons or deadly weapons, see §§ 47-5-191 through 47-5-195.

Unlawful possession of alcoholic beverages and related personal property, see § 67-1-17.

RESEARCH REFERENCES

ALR.

Validity, construction, and application of state statute criminalizing possession of contraband by individual in penal or correctional institution. 45 A.L.R.5th 767.

§ 97-31-37. Sale of alcohol by druggists; certain sales by retail and wholesale druggists permitted.

Any licensed retail druggist in this state may sell in the manner herein set out pure alcohol for medicinal purposes only; grain alcohol to chemists and bacteriologists actually engaged in scientific work and for the purpose of being used only in such work; and wine to be used for sacramental purposes only; provided that the wholesale druggists domiciled and doing business in this state may sell pure alcohol in quantities not less than one gallon to licensed retail druggists, and to licensed and practicing physicians, and to public or charity hospitals, and to medical or pharmaceutical colleges, but all wholesale druggists shall make and preserve for two years after such sales a complete record of sales of alcohol which shall at all times be open for inspection to any conservator of the peace of the county; and provided further, that nothing in this chapter shall be construed to prohibit the manufacture or sale of wood and denatured alcohol for art, scientific and mechanical purposes. A person shall not be deemed a licensed retail druggist within the meaning of this section by reason of being a licensed physician or pharmacist.

HISTORY: Codes, Hemingway's 1917, § 2114; 1930, § 1995; 1942, § 2634; Laws, 1908, ch. 113.

Cross References — Local option alcoholic beverage control law, see §§ 67-1-1 et seq.

Prohibition of alcoholic beverages except as authorized by law, see § 67-1-9.

Regulation of sale of alcoholic beverages, generally, see §§ 67-3-1 et seq.

Sale, etc., of denatured alcohol, see § 97-31-17.

Exceptions to unlawful sale, possession, etc., generally, see § 97-31-33.

JUDICIAL DECISIONS

1. In general.

One accused of unlawful possession of intoxicating liquor did not come within the protection of Code 1942, §§ 2634 to 2638 inclusive, on the theory that she was ill and that her attending physician had prescribed whisky as a stimulant, where physician issued no written prescription and it did not appear where or from whom accused obtained the whisky. Conner v. State, 196 Miss. 335, 17 So. 2d 527, 1944 Miss. LEXIS 198 (Miss. 1944).

A defendant's drugstore would not be abated as a common nuisance on the ground that alcohol was sold in violation of the statute prohibiting any licensed retail drugstore from selling "pure" alcohol for medicinal purposes except on written prescription of a physician, where the suit was brought by the district attorney for the recovery of the tax imposed for selling or giving away liquors unlawfully, and to obtain an injunction suppressing the business as a nuisance. State v. Carr, 191 Miss. 659, 4 So. 2d 237, 1941 Miss. LEXIS 183 (Miss. 1941).

In an action involving the alleged illegal sale of intoxicating liquors, the state chemist testified that the preparations sold by the defendant contained 82 per cent alcohol, whereas, "pure" alcohol would run from 98 per cent to 100 per cent. State v. Carr, 191 Miss. 659, 4 So. 2d 237, 1941 Miss. LEXIS 183 (Miss. 1941).

RESEARCH REFERENCES

CJS.
48 C.J.S., Intoxicating Liquors § 140.

§ 97-31-39. Sale of alcohol by druggists; medicinal purposes; physician's certificate.

No sale of pure alcohol for medicinal purposes shall be made except upon the written prescription of a licensed and practicing physician of this state, who, before writing such prescription shall have made an actual examination of the patient for whom the prescription is issued, which prescription shall be dated and signed by the physician and shall be in substantially the following form:

"State of Mississippi, ________ County, I ________ a regularly licensed and practicing physician under the laws of this state, do hereby certify that I have examined ________ a patient in my charge, and hereby prescribe for the use of said patient ________ of pure alcohol, and I certify that the use thereof is necessary to alleviate or cure the illness or disease from which such patient is suffering. Dated ________"

__________________, M. D.

No prescription shall be filled hereunder except upon the day upon which it is issued or the following day, and no more than half a pint of alcohol shall be furnished on any one prescription, and when such prescription is filled it shall not be refilled, but shall be delivered to the druggist filling the same, and at the end of the month in which the same is filed shall be filed by such druggist in the office of the circuit clerk of the county. In towns having a population of 1,000 or more the physician's prescription shall not be filled at any drug store of which he is the proprietor, or in which he has a financial interest, either as partner, stockholder, or otherwise.

Any person purchasing alcohol for any purpose set out in this section, for which a prescription is not required herein, shall first sign a written or printed statement properly dated and deliver the same to the druggist, stating his name, residence and occupation, and the purpose for which he intends to use said alcohol.

HISTORY: Codes, Hemingway's 1917, § 2115; 1930, § 1996; 1942, § 2635; Laws, 1908, ch. 113.

JUDICIAL DECISIONS

1. In general.
One accused of unlawful possession of intoxicating liquor did not come within the protection of Code 1942, §§ 2634 to 2638 inclusive, on the theory that she was ill and that her attending physician had

prescribed whisky as a stimulant, where physician issued no written prescription and it did not appear where or from whom accused obtained the whisky. Conner v. State, 196 Miss. 335, 17 So. 2d 527, 1944 Miss. LEXIS 198 (Miss. 1944).

RESEARCH REFERENCES

CJS.
48 C.J.S., Intoxicating Liquors § 99.

§ 97-31-41. Sale of alcohol by druggists; wine for sacramental purposes.

It shall be unlawful to sell wine for sacramental purposes except to a minister, pastor, priest, or officer of a regularly organized church or religious congregation, and before such a sale is made, the person desiring to make such purchase shall sign and deliver to the druggist a written or printed statement giving his name, residence, and the name and location of the church for which the wine is purchased, and shall certify that it is purchased in good faith to be used only for sacramental purposes.

HISTORY: Codes, Hemingway's 1917, § 2116; 1930, § 1997; 1942, § 2636; Laws, 1908, ch. 113.

Cross References — Regulation of sale of light wines, etc., generally, see §§ 67-3-1 et seq.

Exceptions to unlawful sale, possession, etc., generally, see § 97-31-33.

RESEARCH REFERENCES

Am. Jur.
45 Am. Jur. 2d, Intoxicating Liquors § 72.

§ 97-31-43. Sale of alcohol by druggists; statement of sales or prescriptions to be filed with circuit clerk; filing fee.

All statements or prescriptions required by this chapter shall be delivered at the end of the month in which they were given or within five days thereafter to the circuit clerk of the county in which the sale was made and shall be filed and preserved by the circuit clerk in his office for a period of not less than two years, and shall moreover be promptly listed and indexed in a book kept for that purpose, which shall show the name of the druggist making the sale, the name of the purchaser, the date of the statement or prescription and the quantity of alcohol purchased. The original statement or prescription with the certificate of the circuit clerk endorsed thereon, showing that it has been registered, or a certified copy of such record, shall be prima facie evidence in any prosecution, suit or proceeding of the facts recited therein. The circuit clerk for filing and registering each statement or prescription, shall be entitled to a fee of ten cents, which shall be paid by the druggist filing the same.

HISTORY: Codes, Hemingway's 1917, § 2117; 1930, § 1998; 1942, § 2637; Laws, 1908, ch. 113.

JUDICIAL DECISIONS

1. In general.

Statute requiring statement of sales of alcohol to be kept on file for two years had no bearing on revoking suspension of sentence after two years. Bolton v. State, 166 Miss. 290, 146 So. 453, 1933 Miss. LEXIS 346 (Miss. 1933).

§ 97-31-45. Sale of alcohol by druggists; penalties for certain violations.

Any physician who signs or issues any prescription containing any false statement; any druggist who shall sell any alcohol or shall fill any prescription for alcohol in anywise other than herein allowed, or shall refill any prescription for alcohol or who shall fail to file a prescription filled by him in the office of the circuit clerk within the time prescribed; any person who shall obtain alcohol or wine for any purpose authorized herein and who shall convert the same to any other use; shall be guilty of a misdemeanor and shall, on conviction, be fined not less than fifty dollars, nor more than five hundred dollars, or be imprisoned in the county jail not less than one week, or more than three months, or both. But in no case of a conviction of any person for an offense under this section committed after a conviction and punishment for a former offense hereunder, shall the punishment be less than a fine of one hundred dollars nor more than provided in this section, or imprisonment in the county jail for not less than sixty days nor more than six months, or both, in the discretion of the court.

HISTORY: Codes, Hemingway's 1917, § 2118; 1930, § 1999; 1942, § 2638; Laws, 1908, ch. 113.

Cross References — Suspension or revocation of physician's license, see § 73-25-27.

Physician's certificate, see § 97-31-39.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

CJS.

48 C.J.S., Intoxicating Liquors § 140.

§ 97-31-47. Transportation of intoxicating liquors into or within state unlawful.

It shall be unlawful for any transportation company, or any agent, employee, or officer of such company, or any other person, or corporation to transport into or deliver in this state in any manner or by any means any spirituous, vinous, malt, or other intoxicating liquors or drinks, or for any such person, company, or corporation to transport any spirituous, malt, vinous, or intoxicating liquors or drinks from one place within this state to another place within the state, or from one (1) point within this state to any point without the state, except in cases where this chapter or Section 67-9-1 authorizes the transportation.

HISTORY: Codes, Hemingway's 1921 Supp. § 2163a; 1930, § 2003; 1942, § 2642; Laws, 1918, ch. 189; Laws, 1996, ch. 417, § 13, eff from and after July 1, 1996.

Cross References — Unlawful possession of alcoholic beverages and related personal property, and forfeiture thereof, see §§ 67-1-17, 67-1-18.

Regulation of distribution of alcoholic beverages under local option alcoholic beverage control law, see §§ 67-1-41 et seq.

Regulation of transportation of light wines and beer, see § 67-3-61.

JUDICIAL DECISIONS

1. In general.

Under Webb-Kenyon act, states may prohibit such shipments. Clark Distilling Co. v. Western M. R. Co., 242 U.S. 311, 37 S. Ct. 180, 61 L. Ed. 326, 1917 U.S. LEXIS 2189 (U.S. 1917).

Where undisputed facts showed that neither taxicab owner nor chauffeur knew that passenger was using car to transport intoxicating liquors, and that the owner had not been negligent in employing the chauffeur, and had directed him not to use the car for such illegal purposes, the circuit court could not order the car forfeited and destroyed. Aldinger v. State, 115 Miss. 314, 75 So. 441, 1917 Miss. LEXIS 172 (Miss. 1917).

Delivery of liquor to boat in Louisiana for continuous passage into Mississippi was an interstate shipment and did not violate Code 1906, § 1771. American Express Co. v. Miller, 104 Miss. 247, 61 So. 306, 1913 Miss. LEXIS 24 (Miss. 1913).

Nonintoxicating beverage containing 5.73% malt is within prohibition act 1908 ch. 115 § 1. Purity Extract & Tonic Co. v. Lynch, 100 Miss. 650, 56 So. 316, 1911 Miss. LEXIS 17 (Miss. 1911), aff'd, 226 U.S. 192, 33 S. Ct. 44, 57 L. Ed. 184, 1912 U.S. LEXIS 2145 (U.S. 1912).

RESEARCH REFERENCES

Am. Jur.

45 Am. Jur. 2d, Intoxicating Liquors §§ 28 et seq., 270, 280, 298, 313, 323, 351.

CJS.

48 C.J.S., Intoxicating Liquors §§ 369-374.

§ 97-31-49. Solicitation of orders for liquors, etc. unlawful.

It shall be unlawful for any person, firm or corporation in this state, in person, by letter, circular, or other printed or written matter, or in any other manner, to solicit or take order in this state for any liquors, bitters or drinks prohibited by the laws of this state to be sold, bartered, or otherwise disposed of. The inhibition of this section shall apply to such liquors, bitters and drinks, whether the parties intend that the same shall be shipped into this state from outside of the state, or from one point in this state to another point in this state. If such order be in writing, parol evidence thereof is admissible without producing or accounting for the absence of the original; and the taking or soliciting of such orders is within the inhibition of this section, although the orders are subject to approval by some other person, and no part of the price is paid, nor any part of the goods is delivered when the order is taken.

HISTORY: Codes, Hemingway's 1921 Supp. § 2163g; 1930, § 2006; 1942, § 2645; Laws, 1918, ch. 189.

Cross References — One acting as agent in sale of liquor, see § 97-31-29.

RESEARCH REFERENCES

Am. Jur.
45 Am. Jur. 2d, Intoxicating Liquors § 246.

CJS.
48 C.J.S., Intoxicating Liquors § 339.

§ 97-31-51. Witnesses; immunity from prosecution granted; penalty for refusing to testify.

No person shall be excused from attending and testifying before a grand jury, or before any court, or in any cause or proceeding, criminal or otherwise, based upon or growing out of any alleged violation of this chapter, or any amendment thereof, on the ground and for the reason that the testimony or evidence, documentary or otherwise, required of him, may tend to criminate him or subject him to a penalty or forfeiture. But no person shall be prosecuted or subject to any penalty or forfeiture for or on account of any transaction, matter or thing, concerning which he may testify, or produce evidence, documentary or otherwise, before the grand jury, or any court; provided, that no person so testifying shall be exempt from prosecution or punishment for perjury in so testifying. Any person who shall neglect or refuse to so attend or testify, or to answer any lawful inquiry, or to produce books or other documentary evidence, if in his power to do so, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars or more than five hundred dollars, or by imprisonment for not more than ninety days, or by both such fines and imprisonment.

HISTORY: Codes, 1906, § 1792; Hemingway's 1917, § 2106; 1930, § 1991; 1942, § 2630.

Cross References — Subpoena and swearing of witnesses before grand jury, see § 13-5-63.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

Immunity of witnesses in intoxicating liquor proceedings, generally, see § 99-27-45.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Proceedings before grand jury.
3. Applicability to civil actions.

1. In general.

In view of this section [Code 1942, § 2630], a defendant, who by his own testimony admitted the sale of intoxicating liquors in connection with his mercantile business could not be prosecuted for such offense, since by his confession of guilt he subjected himself to penalty and forfeiture of both his liquor business and his mercantile business. Malouf v. Gully, 187 Miss. 331, 192 So. 2, 1939 Miss. LEXIS 84 (Miss. 1939).

The immunity granted by this section [Code 1942, § 2630] is to a witness introduced by, and compelled to testify at the instance of, the state. Ivey v. State, 153 Miss. 41, 120 So. 449, 1929 Miss. LEXIS 12 (Miss. 1929).

Defendant testifying on trial of another on behalf of the latter was not entitled to immunity from prosecution. Ivey v. State, 153 Miss. 41, 120 So. 449, 1929 Miss. LEXIS 12 (Miss. 1929).

Law granting immunity held inapplicable to information secured by county attorney while interrogating state witness preparatory to trial. Cook v. State, 150 Miss. 304, 116 So. 598, 1928 Miss. LEXIS 128 (Miss. 1928).

Person testifying as to violation of prohibition laws is immune from prosecution for crime revealed by his testimony. State v. White, 140 Miss. 245, 105 So. 500, 1925 Miss. LEXIS 256 (Miss. 1925).

Burden on defendant to establish facts constituting immunity. Hosey v. State, 136 Miss. 5, 100 So. 577, 1924 Miss. LEXIS 106 (Miss. 1924).

Defendant testifying for jointly indicted defendant not entitled by reason thereof to immunity. Turnage v. State, 134 Miss. 431, 99 So. 9, 1924 Miss. LEXIS 279 (Miss. 1924).

When accused entitled to immunity in prosecution for unlawful sale of intoxicating liquors stated. Maxie v. State, 133 Miss. 243, 97 So. 560, 1923 Miss. LEXIS 134 (Miss. 1923).

Party compelled to incriminate himself in preliminary trial of another held immune in prosecution. Griffin v. State, 127 Miss. 315, 90 So. 81, 1921 Miss. LEXIS 226 (Miss. 1921).

2. Proceedings before grand jury.

Where the defendant appeared before a grand jury which indicted him for the crime of unlawfully selling intoxicating liquor, defendant was not entitled to a claim of immunity inasmuch as he did not testify to anything pertaining to the sale of intoxicating liquor and he gave no testimony that would tend to incriminate him. Odom v. State, 213 Miss. 363, 56 So. 2d 887, 1952 Miss. LEXIS 376 (Miss. 1952).

Defendant who, while charged with possessing liquor, was called before grand jury, and testified concerning subject of prosecution, held entitled to immunity. Evans v. State, 157 Miss. 645, 128 So. 737, 1930 Miss. LEXIS 332 (Miss. 1930).

Defendant, having been questioned relative to liquor conditions by grand jury when testifying voluntarily before it for another purpose, held immune from prosecution for manufacturing liquor. Thornton v. State, 143 Miss. 262, 108 So. 709, 1926 Miss. LEXIS 263 (Miss. 1926).

Defendant who testified before grand jury as to sale of liquor could not thereafter be convicted of sale. Ryan v. State, 136 Miss. 587, 101 So. 381, 1924 Miss. LEXIS 132 (Miss. 1924); Hosey v. State, 136 Miss. 5, 100 So. 577, 1924 Miss. LEXIS 106 (Miss. 1924).

Motion on admitted facts entitling defendant to discharge for testifying before grand jury should be sustained. Sudduth v. State, 136 Miss. 742, 101 So. 711, 1924 Miss. LEXIS 178 (Miss. 1924).

Although prosecution begun by affidavit, defendant, testifying before grand jury concerning subject of accusation, entitled to immunity. Triplett v. State, 136 Miss. 320, 101 So. 501, 1924 Miss. LEXIS 146 (Miss. 1924).

One voluntarily testifying before the grand jury, subsequent to indictment, relative to participation in manufacturing liquor, is immune from prosecution. Lucas v. State, 130 Miss. 8, 93 So. 437, 1922 Miss. LEXIS 180 (Miss. 1922).

An officer who is compelled by virtue of this section [Code 1942, § 2630] to disclose before the grand jury his failure to prosecute violations of the liquor law, is immune from prosecution therefor. Wall v. State, 105 Miss. 543, 62 So. 417, 1913 Miss. LEXIS 219 (Miss. 1913).

Indictment founded on the testimony of accused before the grand jury in pursuance to a subpoena will be quashed. Rist v. State, 93 Miss. 841, 47 So. 433, 1908 Miss. LEXIS 138 (Miss. 1908).

3. Applicability to civil actions.

Where immunity from prosecution is granted by statute, a motion or plea based upon the constitutional right or privilege against self-incrimination is not well taken. Dabdoub v. Venus, 192 So. 2d 418 (Miss. 1966).

The privilege against self-incrimination applies to civil as well as criminal actions. Bailey v. Muse, 227 Miss. 51, 85 So. 2d 918, 1956 Miss. LEXIS 654 (Miss. 1956).

The provisions of this section [Code 1942, § 2630] apply to proceedings under Code 1942, § 2639, which provides for civil action to collect penalty for unlawfully selling or giving away intoxicating liquors, so that defendant who incriminates himself is immune from fines and penalties. Bailey v. Muse, 227 Miss. 51, 85 So. 2d 918, 1956 Miss. LEXIS 654 (Miss. 1956).

Where defendants in a suit by state tax collector to collect from defendants statutory fines and penalties for unlawful sale of intoxicating liquors, were required to answer allegations in a bill of complaint in chancery as to their unlawful sales of liquor, defendants were immune from assessment of fines and penalties, notwithstanding the bill of complaint waived answer under oath. Bailey v. Muse, 227 Miss. 51, 85 So. 2d 918, 1956 Miss. LEXIS 654 (Miss. 1956).

In a criminal prosecution for unlawful sale of intoxicating liquor, the testimony of the court's reporter concerning the previous voluntary testimony of the defendant in a civil suit for the unlawful sale of the same intoxicating liquor, was properly admitted and this evidence was not hearsay. Yawn v. State, 220 Miss. 767, 71 So. 2d 779, 1954 Miss. LEXIS 493 (Miss. 1954).

Where a defendant voluntarily testified as a witness in his own behalf in the civil action against him by the state tax collector for unlawful sale of intoxicating liquor, the defendant was not granted immunity from prosecution for unlawful sale of the same intoxicating liquor. Yawn v. State, 220 Miss. 767, 71 So. 2d 779, 1954 Miss. LEXIS 493 (Miss. 1954).

In a suit in chancery on relation of district attorney to enjoin defendants from selling intoxicating liquor, where defendants were called in as adverse witnesses for cross-examination and compelled to testify that they have unlawfully sold liquor, the bill of complaint will be dismissed on the ground that the defendants were compelled to testify against themselves, and they were granted immunity from further prosecution. Zambroni v. State, 217 Miss. 418, 64 So. 2d 335, 1953 Miss. LEXIS 446 (Miss. 1953).

RESEARCH REFERENCES

Lawyers' Edition.

Adequacy, under Federal Constitution, of immunity granted in lieu of privilege against self-incrimination. 32 L. Ed. 2d 869.

§ 97-31-53. Penalty for violations where punishment not specifically prescribed.

Any person, firm or corporation convicted of violating any part of this chapter for which there is not prescribed specifically the punishment for such violation, shall be guilty of a misdemeanor and shall be fined not less than one hundred dollars, nor more than five hundred dollars, or be imprisoned in the county jail not longer than six months, or both.

HISTORY: Codes, Hemingway's 1921 Supp. § 2163s; 1930, § 2019; 1942, § 2658; Laws, 1918, ch. 189.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

Assessment and recovery of penalty on liquor dealers for unlawful sale or gift of malt, vinous or spirituous liquors, see § 99-27-39.

JUDICIAL DECISIONS

1. In general.

Sentence of two hundred dollar fine and sixty days in jail for possessing liquor held excessive. Buck v. State, 153 Miss. 710, 121 So. 147, 1929 Miss. LEXIS 53 (Miss. 1929).

On excessive sentence, supreme court will affirm in other respects and remand cause for new sentence. Myers v. State, 149 Miss. 749, 115 So. 893, 1928 Miss. LEXIS 83 (Miss. 1928).

Sentence of three months in jail and fine of $500 for possession of more than one quart of liquor held excessive. Roney v. State, 147 Miss. 29, 112 So. 601, 1927 Miss. LEXIS 297 (Miss. 1927).

Fine and imprisonment not exceeding 30 days is limit of punishment for possession of liquor. Cox v. State, 146 Miss. 685, 112 So. 479, 1927 Miss. LEXIS 252 (Miss. 1927).

RESEARCH REFERENCES

ALR.

When does forfeiture of currency, bank account, or cash equivalent violate excessive fines clause of Eight Amendment. 164 A.L.R. Fed. 591.

§ 97-31-55. Immunity for certain persons who request emergency medical assistance for individuals appearing to need medical assistance due to alcohol consumption; immunity for peace officer for complying or failing to comply with this section.

(1) A peace officer shall not take a person into custody based solely on the commission of an offense involving alcohol if the peace officer, after making a reasonable determination and considering the facts and surrounding circumstances, reasonably believes that all of the following apply:

(a) The peace officer has contact with the person because the person acting in good faith requested emergency medical assistance for an individual who reasonably appeared to be in need of medical assistance due to alcohol consumption and the person did not illegally provide alcohol to the individual.

(b) The person:

(i) Provided his full name and any other relevant information requested by the peace officer;

(ii) Remained at the scene with the individual who reasonably appeared to be in need of medical assistance due to alcohol consumption until emergency medical assistance arrived; and

(iii) Cooperated with emergency medical assistance personnel and peace officers at the scene.

(2) A person who meets the criteria of subsection (1) of this section shall be immune from criminal prosecution for any offense related solely to the possession and consumption of alcohol.

(3) A person shall not initiate or maintain an action against a peace officer or the employing state agency or political subdivision based on the officer's compliance or failure to comply with this section.

HISTORY: Laws, 2018, ch. 443, § 1, eff from and after July 1, 2018.

Cross References — Drug overdose immunity in Mississippi Medical Emergency Good Samaritan Act, see § 41-29-149.1.

CHAPTER 32.

TOBACCO OFFENSES

Article 1. Mississippi Juvenile Tobacco Access Prevention Act. 97-32-1
Article 3. Mississippi Adult Tobacco Use on Educational Property Act. 97-32-25
Article 5. Distribution of Alternative Nicotine Products to Minors. .. 97-32-51

ARTICLE 1.

MISSISSIPPI JUVENILE TOBACCO ACCESS PREVENTION ACT.

Sec.

97-32-1. Short title.
97-32-2. Legislative intent; supersedes local laws, ordinances and regulations.
97-32-3. Definitions.
97-32-5. Prohibition of the sale or transfer of tobacco products to persons under 18 years of age.
97-32-7. Retail sales clerks; notification and agreement; penalties for violations.
97-32-9. Juvenile purchase, possession and consumption of tobacco or alternative nicotine product; penalties.
97-32-11. Point of sale warning signs.
97-32-13. Juvenile misrepresentation of age.
97-32-15. Vending machine tobacco sales; location.
97-32-17. Prohibition on the distribution of tobacco products other than in sealed packages.
97-32-19. Transfers of tobacco products from distributors or wholesalers to retailers.
97-32-21. Unannounced inspections.
97-32-23. Confidentiality.

§ 97-32-1. Short title.

This article shall be known and cited as “The Mississippi Juvenile Tobacco Access Prevention Act of 1997.”

HISTORY: Laws, 1997, ch. 578, § 1, eff from and after February 1, 1998.

§ 97-32-2. Legislative intent; supersedes local laws, ordinances and regulations.

It is the intent of the Legislature that enforcement of this chapter be implemented in an equitable manner throughout the state. The provisions of Sections 97-32-5, 97-32-7, 97-32-9, 97-32-11, 97-32-13, 97-32-15, 97-32-17, 97-32-19, 97-32-21 and 97-32-51 shall supersede any existing or subsequently enacted local law, ordinance or regulation which relates to the sale, promotion and distribution of alternative nicotine products, tobacco and tobacco products.

HISTORY: Laws, 1998, ch. 312, § 1, eff from and after passage (approved

March 12, 1998); Laws, 2020, ch. 470, § 8, eff from and after passage (approved July 8, 2020).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the second sentence. The words "provisions of 97-32-5, 97-32-7" were changed to "provisions of Sections 97-32-5, 97-32-7." The Joint Committee ratified the correction at its May 20, 1998 meeting.

Amendment Notes — The 2020 amendment, effective July 8, 2020, inserted "97-32-9," "97-32-13," and "and 97-32-51," and made a related change; and inserted "alternative nicotine products."

§ 97-32-3. Definitions.

For the purposes of this article:

(a) "Dealer" means every person, firm, corporation or association of persons, except retailers as defined herein, who receives the product from the manufacturer of tobacco for distribution, for sale, for use, or for consumption in the State of Mississippi.

(b) "Person" means any natural person.

(c) "Photographic identification" means any government-issued card that includes a photograph of the person seeking to purchase tobacco products and that is accepted as proof of age under Mississippi law.

(d) "Point of sale" means a store, stand, or any other place of business or point of distribution maintained by a seller from which tobacco products are made available for sale or distribution to consumers.

(e) "Retailer" includes every company, corporation, partnership, business association, joint venture, estate, trust, or any other combination acting as a unit or legal entity other than a wholesale dealer as defined below, whose business is that of selling merchandise at retail, who shall sell or offer for sale tobacco to the consumer.

(f) "Seller" means any natural person, company, corporation, firm, partnership, organization or other legal entity who sells, dispenses, distributes or issues tobacco products for commercial purposes.

(g) "Tobacco product" means any substance that contains tobacco, including, but not limited to, cigarettes, cigars, pipes, snuff, smoking tobacco or smokeless tobacco; "tobacco product" also means cigarette rolling papers.

(h) "Wholesaler" includes dealers whose principal business is that of wholesale dealer or jobber, who is known to the retail trade as such, and whose place of business is located in Mississippi or in a state which affords reciprocity to wholesalers domiciled in Mississippi, who shall sell any taxable tobacco to retail dealers only for the purpose of resale.

(i) "Retailer Tobacco Prevention Education Program" includes any program authorized by the Attorney General that teaches and informs retailers and wholesalers about the laws regarding youth access to tobacco products.

HISTORY: Laws, 1997, ch. 578, § 2; Laws, 2002, ch. 307, § 1, eff from and after July 1, 2002.

§ 97-32-5. Prohibition of the sale or transfer of tobacco products to persons under 18 years of age.

It shall be unlawful for any person, or retailer, to sell, barter, deliver or give tobacco products to any individual under eighteen (18) years of age unless the individual under eighteen (18) years of age holds a retailer's license to sell tobacco under Section 27-69-1 et seq., Mississippi Code of 1972.

It shall be an absolute affirmative defense that the person selling, bartering, delivering or giving tobacco products over the counter in a retail establishment to an individual under eighteen (18) years of age in violation of this article had requested and examined a government-issued photographic identification from such person establishing his age as at least eighteen (18) years prior to selling such person a tobacco product. The failure of a seller, barterer, deliverer or giver of tobacco products over the counter in a retail establishment to request and examine photographic identification from a person under eighteen (18) years of age prior to the sale of a tobacco product to such person if the individual is not known to the seller, barterer, deliverer or giver of the tobacco product to be over the age of eighteen (18) years, shall be construed against the seller, barterer, deliverer or giver and form a conclusive basis for the seller's violation of this section.

It shall be an absolute affirmative defense that the person or entity giving tobacco products through the mail to an individual under eighteen (18) years of age in violation of this article had requested and received documentary or written evidence from such person purportedly establishing his age to be at least eighteen (18) years of age.

Any person who violates this section shall be liable as follows: For a first conviction, a fine of Fifty Dollars ($50.00); for a second conviction, a fine of Seventy-five Dollars ($75.00); and for all subsequent convictions, a fine of One Hundred Fifty Dollars ($150.00) shall be imposed.

Any person found in violation of this section shall be issued a citation and the holder of the retailer permit shall be sent notification of this citation by registered mail by the law enforcement agency issuing the citation. Notification shall include the opportunity for hearing before the appropriate court. For a first conviction, the retailer shall be sent a warning letter informing him of the retailer's responsibility in the selling of tobacco products. For a second conviction, the retailer, or retailer's designee, shall be required to enroll in and complete a "Retailer Tobacco Education Program."

For a third or subsequent violation of this section by any retailer, within one (1) year of the two (2) prior violations, any retailer's permit issued pursuant to Section 27-69-1 et seq., Mississippi Code of 1972, may be revoked or suspended for a period of at least one (1) year after notice and opportunity for hearing. If said permit is revoked by the Department of Revenue, the retailer may not reapply for a permit to sell tobacco for a period of six (6) months. For the purposes of this section, "subsequent violations" are those committed at the same place of business.

It is the responsibility of all law enforcement officers and law enforcement agencies of this state to ensure that the provisions of this article are enforced.

It shall not be considered a violation of this section on the part of any law enforcement officer or person under eighteen (18) years of age for any law enforcement officer of this state to use persons under eighteen (18) years of age to purchase or attempt to purchase tobacco products for the purpose of monitoring compliance with this section, as long as those persons are supervised by duly authorized law enforcement agency officials.

Any law enforcement agency conducting enforcement efforts undertaken pursuant to this article shall prepare a report as prescribed by the Attorney General which includes the number of unannounced inspections conducted by the agency, a summary of enforcement actions taken pursuant to this article, the name and permit number of the retailer pursuant to Section 27-69-1 et seq., Mississippi Code of 1972, and final judicial disposition on all enforcement actions. Reports shall be forwarded to the Office of the Attorney General within twenty (20) working days of the final judicial disposition.

On notification from local law enforcement that a retailer has violated this article so as to warrant a revocation of the retailer's permit, the Attorney General shall notify in writing the Department of Revenue within twenty (20) working days.

In accordance with the procedures of Section 27-69-9, Mississippi Code of 1972, the Department of Revenue shall initiate revocation procedures of the retailer's permit. The Office of the Attorney General shall provide legal assistance in revocation procedures when requested by the Department of Revenue.

HISTORY: Laws, 1997, ch. 578, § 3, eff from and after February 1, 1998; Laws, 2020, ch. 331, § 4, eff from and after July 1, 2020.

Amendment Notes —

The 2020 amendment substituted "Department of Revenue" for "Tax Commission" and "State Tax Commission" everywhere they appear.

§ 97-32-7. Retail sales clerks; notification and agreement; penalties for violations.

(1) Every person engaged in the business of selling tobacco products or alternative nicotine products at retail shall notify each individual employed by that person as a retail sales clerk that state law:

(a) Prohibits the sale or distribution of tobacco products or alternative nicotine products, including samples, to any person under twenty-one (21) years of age and the purchase or receipt of tobacco products or alternative nicotine products by any person under twenty-one (21) years of age; and

(b) Requires that proof of age be demanded from a prospective purchaser or recipient if the prospective purchaser or recipient is under the age of twenty-one (21) years. Every person employed by a person engaged in the business of selling tobacco products or alternative nicotine products at retail shall sign an agreement with his employer in substantially the following or similar form:

> "I understand that state and federal law prohibit the sale or distribution of tobacco products and alternative nicotine products to persons under the age of twenty-one (21) years and out-of-package sales, and requires that proof of age be demanded from a prospective purchaser or recipient under twenty-one (21) years of age if the individual is not known to the seller, barterer, deliverer or giver of the tobacco product or alternative nicotine product to be over the age of twenty-one (21) years. I promise, as a condition of my employment, to observe this law."

(2) Any person violating the provisions of this section shall be penalized not less than Fifty Dollars ($50.00) nor more than One Hundred Dollars ($100.00).

(3) No retailer who instructs his employee as provided in this section shall be liable for any violations committed by such employees.

HISTORY: Laws, 1997, ch. 578, § 4, eff from and after February 1, 1998; Laws, 2020, ch. 470, § 5, eff from and after passage (approved July 8, 2020).

Amendment Notes — The 2020 amendment, effective July 8, 2020, inserted "or alternative nicotine products" or similar words throughout the section; and substituted "twenty-one (21)" for "eighteen (18)" everywhere it appears.

§ 97-32-9. Juvenile purchase, possession and consumption of tobacco or alternative nicotine product; penalties.

No person under twenty-one (21) years of age shall purchase any tobacco or alternative nicotine product. No student of any high school, junior high school or elementary school shall possess tobacco or alternative nicotine on any educational property as defined in Section 97-37-17.

(a) If a person under twenty-one (21) years of age is found by a court to be in violation of any other statute and is also found to be in possession of a tobacco or alternative nicotine product, the court shall punish the minor as follows:

(i) For a first offense, pay a fine of One Hundred Dollars ($100.00), and perform no more than fifteen (15) hours of community service;

(ii) For a second offense, a fine of Three Hundred Dollars ($300.00), and no more than twenty-five (25) hours of community service;

(iii) For a third offense or subsequent offense, a fine of Five Hundred Dollars ($500.00), and no more than forty (40) hours of community service.

(b) A violation under this section is not to be recorded on the criminal history of the minor and, upon proof of satisfaction of the court's order, the record shall be expunged from any records other than youth court records.

HISTORY: Laws, 1997, ch. 578, § 5; Laws, 2012, ch. 533, § 1, eff from and after July 1, 2012; Laws, 2020, ch. 470, § 4, eff from and after passage (approved July 8, 2020).

Amendment Notes — The 2020 amendment, effective July 8, 2020, in the first paragraph, substituted "twenty-one (21) years of age" for "eighteen (18) years of age" and inserted "or alternative nicotine" twice; rewrote (a), which read: "If a person under eighteen (18) years of age is found by a court to be in violation of any other statute and is also found to be in possession of a tobacco product, the court may order the minor to perform up to three (3) hours of community service, in addition to any other punishment imposed by the court"; and added (a)(i) through (iii).

OPINIONS OF THE ATTORNEY GENERAL

The statute is a policy statement by the legislature; it does not provide for a criminal penalty, and a violation of it does not constitute a crime nor amount to a delinquent act. Zebert, October 9, 1998, A.G. Op. #98-0587.

A city or county is not prohibited from enacting a local law or ordinance that prohibits the possession of tobacco products by minors and provides penalties therefor, within the limits authorized by the general law. Zebert, October 9, 1998, A.G. Op. #98-0587.

RESEARCH REFERENCES

ALR.

Validity, Construction, and Application of State and Local Laws Providing for Civil Liability for Tobacco Sales or Distribution to Minors. 66 A.L.R.6th 315.

§ 97-32-11. Point of sale warning signs.

Point of sale warning signs are required, and each seller shall place and maintain in legible condition, at each point of sale of tobacco products to consumers, a sign no smaller than eight and one-half (8-½) by eleven (11) inches or ninety-three (93) square inches stating: "STATE LAW PROHIBITS THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER THE AGE OF 18 YEARS. PROOF OF AGE REQUIRED."

Any person who violates this section shall be punished by a penalty of not more than One Hundred Dollars ($100.00).

HISTORY: Laws, 1997, ch. 578, § 6, eff from and after February 1, 1998.

§ 97-32-13. Juvenile misrepresentation of age.

Any person under the age of twenty-one (21) years who falsely states he is twenty-one (21) years of age or older, or presents any document that indicates he is twenty-one (21) years of age or older, for the purpose of purchasing or possessing any alternative nicotine product, tobacco or tobacco product shall be penalized not less than Twenty-five Dollars ($25.00) nor more than Two Hundred Dollars ($200.00) or required to complete at least thirty (30) days' community service, or both.

HISTORY: Laws, 1997, ch. 578, § 7, eff from and after February 1, 1998; Laws, 2020, ch. 470, § 6, eff from and after passage (approved July 8, 2020).

Amendment Notes — The 2020 amendment, effective July 8, 2020, substituted "twenty-one (21)" for "eighteen (18)" everywhere it appears; an inserted "alternative nicotine product."

OPINIONS OF THE ATTORNEY GENERAL

A city or county is not prohibited from enacting a local law or ordinance that prohibits the possession of tobacco products by minors and provides penalties therefor, within the limits authorized by the general law. Zebert, October 9, 1998, A.G. Op. #98-0587.

§ 97-32-15. Vending machine tobacco sales; location.

It shall be unlawful for any person to sell tobacco products through a vending machine, unless the vending machine is located in an establishment to which individuals under the age of eighteen (18) years are denied access or are required to be accompanied by an adult. A person who violates this section shall be punished by a penalty of not more than Two Hundred Fifty Dollars ($250.00).

HISTORY: Laws, 1997, ch. 578, § 8, eff from and after February 1, 1998.

§ 97-32-17. Prohibition on the distribution of tobacco products other than in sealed packages.

No retailer shall distribute tobacco products other than cigars and pipe tobacco for commercial purposes other than in a sealed package provided by the manufacturer with the required health warning. A retailer who is in violation of this section shall be liable for a penalty of not more than One Hundred Dollars ($100.00) for the first violation or enrollment in a Retailer Tobacco Education Prevention Program, or both; not more than Two Hundred Dollars ($200.00) for a second violation within one (1) year of a prior violation; and a penalty of Three Hundred Dollars ($300.00) for all subsequent violations.

In addition, for a third and all subsequent violations within one (1) year of two (2) prior violations, the permit to sell tobacco products of any person violating this section may be suspended or revoked under the provisions of Section 27-69-1 et seq., Mississippi Code of 1972, for a period of one (1) year after notice and opportunity for a hearing. For the purposes of this section, "subsequent violations" are those committed at the same place of business.

HISTORY: Laws, 1997, ch. 578, § 9, eff from and after February 1, 1998.

§ 97-32-19. Transfers of tobacco products from distributors or wholesalers to retailers.

No distributor or wholesaler of tobacco products shall sell, distribute, deliver, or in any other manner transfer any tobacco products for sale at retail to any person not possessing a valid tobacco permit under Section 27-69-1 et seq., Mississippi Code of 1972.

Any distributor or wholesaler who violates this section shall be liable for a penalty of up to Two Hundred Fifty Dollars ($250.00) for a first offense. For a second offense within one (1) year of the prior offense, any distributor or wholesaler shall be liable for a penalty of up to Five Hundred Dollars ($500.00).

For all subsequent offenses within one (1) year of two (2) prior offenses, the distributor or wholesaler may become ineligible to hold a tobacco distributor's permit for a period of at least one (1) year under Section 27-69-1 et seq., Mississippi Code of 1972, and shall be liable for a penalty of One Thousand Dollars ($1,000.00).

HISTORY: Laws, 1997, ch. 578, § 10, eff from and after February 1, 1998.

§ 97-32-21. Unannounced inspections.

The Office of the Attorney General or local law enforcement agencies shall at least annually conduct random, unannounced inspections at locations where alternative nicotine products, tobacco or tobacco products are sold or distributed to ensure compliance with the Mississippi Juvenile Tobacco Access Prevention Act of 1997. Persons under the age of twenty-one (21) years may be enlisted by the Office of the Attorney General or local law enforcement to test compliance with the Mississippi Juvenile Tobacco Access Prevention Act of 1997, provided that the parent or legal guardian of the person under twenty-one (21) years of age so utilized has given prior written consent for the minor's participation in unannounced inspections. The Office of the Attorney General must prepare a report of the findings, and report these findings to the Department of Health and Department of Mental Health. The Department of Mental Health shall prepare the annual report required by Section 1926, subpart 1 of Part B, Title XIX of the Federal Public Health Service Act (42 USCS 300X-26). The report shall be approved by the Governor and then promptly transmitted to the Secretary of the United States Department of Health and Human Services.

HISTORY: Laws, 1997, ch. 578, § 11, eff from and after February 1, 1998; Laws, 2020, ch. 470, § 7, eff from and after passage (approved July 8, 2020).

Amendment Notes — The 2020 amendment, effective July 8, 2020, inserted "alternative nicotine products, tobacco or," substituted "Mississippi Juvenile Tobacco Access Prevention Act" for "Mississippi Tobacco Youth Access Prevention Act," and substituted "twenty-one (21)" for "eighteen (18)" twice.

Cross References — Mississippi Juvenile Tobacco Access Prevention Act, see §§ 97-32-1 through 97-32-23.

Federal Aspects — Sale of tobacco products to individuals under age of 21, Section 1926, subpart 1 of Part B, Title XIX of the Federal Public Health Service Act, see 42 USCS 300x-26.

§ 97-32-23. Confidentiality.

It shall be unlawful to publish the name or identity of any person under the age of eighteen (18) years who is convicted or adjudicated of any violation of this article.

HISTORY: Laws, 1997, ch. 578, § 14, eff from and after February 1, 1998.

ARTICLE 3.

MISSISSIPPI ADULT TOBACCO USE ON EDUCATIONAL PROPERTY ACT.

Sec.
97-32-25. Short title.
97-32-27. Definitions.
97-32-29. Use of tobacco by adults on certain educational property prohibited; penalties for violation.

§ 97-32-25. Short title.

This article shall be known and cited as “Mississippi Adult Tobacco Use on Educational Property Act of 2000.”

HISTORY: Laws, 2000, ch. 626, § 1, eff from and after July 1, 2000.

§ 97-32-27. Definitions.

(1) “Adult” means any natural person at least eighteen (18) years old.

(2) “Minor” means any natural person under the age of eighteen (18) years.

(3) “Person” means any natural person.

(4) “Tobacco product” means any substance that contains tobacco including, but not limited to, cigarettes, cigars, pipes, snuff, smoking tobacco or smokeless tobacco.

(5) “Educational property” means any public school building or bus, public school campus, grounds, recreational area, athletic field, or other property owned, used or operated by any local school board, school, or directors for the administration of any public educational institution or during a school-related activity; provided, however, that the term “educational property” shall not include any sixteenth section school land or lieu land on which is not located a public school building, public school campus, public school recreational area or public school athletic field. Educational property shall not include property owned or operated by the state institutions of higher learning, the public community and junior colleges, or vocational-technical complexes where only adult students are in attendance.

HISTORY: Laws, 2000, ch. 626, § 2, eff from and after July 1, 2000.

§ 97-32-29. Use of tobacco by adults on certain educational property prohibited; penalties for violation.

No person shall use any tobacco product on any educational property as defined in Section 97-32-27. Any adult who violates this section shall be subject to a fine and shall be liable as follows: (a) for a first conviction, a warning; (b) for a second conviction, a fine of Seventy-five Dollars ($75.00); and (c) for all subsequent convictions, a fine not to exceed One Hundred Fifty Dollars ($150.00) shall be imposed.

Any adult found in violation of this section shall be issued a citation by a law enforcement officer, which citation shall include notice of the date, time and location for hearing before the justice court having jurisdiction where the violation is alleged to have occurred. For the purposes of this section, "subsequent convictions" are for violations committed on any educational property within the State of Mississippi.

Anyone convicted under this article shall be recorded as being fined for a civil violation of this article and not for violating a criminal statute.

It is the responsibility of all law enforcement officers and law enforcement agencies of this state to ensure that the provisions of this article are enforced.

HISTORY: Laws, 2000, ch. 626, § 3, eff from and after July 1, 2000.

ARTICLE 5.

DISTRIBUTION OF ALTERNATIVE NICOTINE PRODUCTS TO MINORS.

Sec.
97-32-51. Distribution of alternative nicotine products to minors prohibited; definitions; penalties; verification of purchaser's age.

§ 97-32-51. Distribution of alternative nicotine products to minors prohibited; definitions; penalties; verification of purchaser's age.

(1) For the purposes of this chapter:

(a)(i) "Alternative nicotine product" means:

1. An electronic cigarette;

2. Any other product that consists of or contains nicotine that can be ingested into the body by chewing, smoking, absorbing, dissolving, inhaling or by any other means;

3. Any electronic device that can be used to deliver nicotine to an individual inhaling from the device, including, but not limited to, any cartridge component, liquid, capsule or powder used to refill or resupply such an electronic device; or

4. An electronic cigar or cigarillo.

(ii) Alternative nicotine product does not include:

1. A cigarette or other tobacco product as defined in Section 97-32-3;

2. A product that is a drug under 21 USCS 321(g)(1);

3. A product that is a device under 21 USCS 321(h); or

4. A combination product described in 21 USCS 353(g).

(b)(i) "Electronic cigarette" means an electronic product or device that produces a vapor that delivers nicotine or other substances to the person inhaling from the device to simulate smoking, and is likely to be offered to, or purchased by, consumers as an electronic cigarette, electronic cigar, electronic cigarillo or electronic pipe.

(ii) Electronic cigarette does not include:

1. A cigarette or other tobacco products as defined in Section 97-32-3;

2. A product that is a drug under 21 USCS 321(g)(1);

3. A product that is a device under 21 USCS 321(h); or

4. A combination product described in 21 USCS 353(g).

(2) No person, either directly or indirectly by an agent or employee, or by a vending machine owned by the person or located in the person's establishment, shall sell, offer for sale, give or furnish any alternative nicotine product, or any cartridge, component, liquid, capsule or powder thereof, to an individual under twenty-one (21) years of age. The penalties described in this subsection shall be treble the fines described in this section, plus any other penalty provided by law, for the sale, use, possession or furnishing of a controlled substance or other substance to a person, if the alternative nicotine product contains any controlled substance that is otherwise prohibited by law, or any other substance that causes the recipient of such to require emergency medical care as a result of using the product. Each violation of the provisions of this section shall be treated as a separate offense. A violation of this subsection is punishable as follows:

(a) By a fine of Two Hundred Fifty Dollars ($250.00) for a first offense;

(b) By a fine of Five Hundred Dollars ($500.00) for a second offense; and

(c) By a fine of One Thousand Dollars ($1,000.00) for a third or subsequent offense.

(3) Before selling, offering for sale, giving or furnishing an alternative nicotine product, or any cartridge, component liquid, capsule or powder thereof, to an individual, a person shall verify that the individual is at least twenty-one (21) years of age by:

(a) Examining from any individual that appears to be under twenty-seven (27) years of age a government-issued photographic identification that establishes the individual is at least twenty-one (21) years of age; or

(b) For sales made through the internet or other remote sales methods, performing an age verification through an independent, third-party age verification service that compares information available from public records to the personal information entered by the individual during the ordering process that establishes the individual is twenty-one (21) years of age or older.

HISTORY: Laws, 2013, ch. 355, § 1, eff from and after July 1, 2013; Laws, 2020, ch. 470, § 3, eff from and after passage (approved July 8, 2020).

Amendment Notes — The 2020 amendment, effective July 8, 2020, in (1), substituted "chapter" for "section" in the introductory paragraph, and added (a)(i)3 and 4 and made a related change; in (2), in the first sentence, substituted "any cartridge, component, liquid, capsule or powder thereof, to an individual under twenty-one (21) years of age" for "any cartridge or component of an alternative nicotine product, to an individual under eighteen (18) years of age" and added the second sentence; in (2)(a), (b) and (c), substituted "Two Hundred and Fifty Dollars ($250.00)" for "Fifty Dollars ($50.00)," "Five Hundred Dollars ($500.00)" for "Seventy-five Dollars ($75.00)," and "One Thousand Dollars ($1,000.00)" for "One Hundred Dollars ($100.00)," respectively; in (3), substituted "any cartridge, component, liquid, capsule or powder thereof" for "any cartridge or component of an alternative nicotine product" and "twenty-one (21) years of age" for "eighteen (18) years of age"; and in (3)(a) and (b), substituted "twenty-one (21) years of age" for "eighteen (18) years of age."

Cross References — Provisions of this section supersede existing or subsequently enacted law relating to the sale, promotion and distribution of alternative nicotine products, tobacco and tobacco products, see § 97-32-2.

§ 97-32-52. Distribution of alternative nicotine products on, in or within 1500 feet of buildings on educational property to individuals under twenty-one years of age prohibited; penalties.

(1) It shall be unlawful for any person who is in, on or within one thousand five hundred (1,500) feet of a building or outbuilding which is all or part of educational property as defined by Section 97-37-17 to sell or furnish an alternative nicotine product to any individual under twenty-one (21) years of age. Each violation of the provisions of this subsection (1) shall be treated as a separate offense.

(2) Upon conviction for violation of the provisions in subsection (1) of this section, the offender shall be punished as follows:

(a) For a first offense, a fine of Five Hundred Dollars ($500.00), and no more than twenty (20) hours of community service;

(b) For a second offense, a fine of One Thousand Dollars ($1,000.00), and no more than thirty (30) hours of community service; and

(c) For a third offense or subsequent offense, a fine of One Thousand Five Hundred Dollars ($1,500.00), and no more than fifty (50) hours of community service.

(3) It shall be unlawful for any person who is in, on or within one thousand (1,000) feet of any church, public park, ballpark, public gymnasium, youth center or movie theater to sell or furnish an alternative nicotine product to any individual under twenty-one (21) years of age. Each violation of the provisions of this subsection (3) shall be treated as a separate offense.

(4) Upon conviction for violation of the provisions in subsection (3) of this section, the offender shall be punished with treble the fines and community service described in subsection (2) of this section.

(5) If the alternative nicotine product sold or furnished in violation of this section contains any controlled substance that is otherwise prohibited by law, or any other substance that causes the recipient to require emergency medical care as a result of using the product, the penalty, upon conviction, shall be treble the fines and community service described in subsection (2) of this section, plus any other penalty provided by law for the sale or furnishing of the controlled substance or other substance.

HISTORY: Laws, 2020, ch. 470, § 2, eff from and after passage (approved July 8, 2020).

CHAPTER 33.

GAMBLING AND LOTTERIES

In General. 97-33-1
Charitable Bingo Law. 97-33-50
Fantasy Contest Act. 97-33-301

IN GENERAL

Sec.
97-33-1. Betting, gaming or wagering; exception from prohibition; penalty.
97-33-3. Gambling; penalties on certain officers; penalty for use of public money.
97-33-5. Gambling; additional fine against winning gambler for amount won.
97-33-7. Gambling devices defined; prohibition; pin ball machines; penalties; exceptions.
97-33-8. Illegal gambling; Internet sweepstakes cafes prohibited.
97-33-9. Gambling; keeping, exhibiting, etc. games or gaming tables; exceptions; applicability of section to games or lotteries authorized by Mississippi lottery law.
97-33-11. Gambling; clubs not to have interest in gaming; each member fined; grand jury investigation; applicability of section to games or lotteries authorized by Mississippi lottery law.
97-33-13. Gambling; building owners, lessees, etc. not to permit gambling; applicability of section to games or lotteries authorized by Mississippi lottery law.
97-33-15. Gambling; hotel, tavern and boarding-house keepers to inform on gamblers.
97-33-17. Gambling; money and appliances forfeited; exceptions.
97-33-19. Gambling; money and appliances forfeited; penalty for resisting seizure.
97-33-21. Gambling; gambling with minor; applicability of section to games or lotteries authorized by Mississippi lottery law.
97-33-23. Gambling; gambling with minor knowing him to be under-age; applicability of section to games or lotteries authorized by Mississippi lottery law.
97-33-25. Gambling; pool-selling; exceptions.
97-33-27. Gambling; betting on horse or yacht race or shooting match; exceptions.
97-33-29. Gambling; laws remedial, not penal.
97-33-31. Lotteries; penalty for putting on; applicability of section to games or lotteries authorized by Mississippi lottery law.
97-33-33. Lotteries; advertising prohibited; applicability of section to games or lotteries authorized by Mississippi lottery law.
97-33-35. Lotteries; advertising prohibited; publication or circulation of newspapers; applicability of section to games or lotteries authorized by Mississippi lottery law.
97-33-37. Lotteries; advertising prohibited; sale of newspapers; applicability of section to games or lotteries authorized by Mississippi lottery law.
97-33-39. Lotteries; sale of tickets; applicability of section to games or lotteries authorized by Mississippi lottery law.
97-33-41. Lotteries; buying tickets in state prohibited; applicability of section to games or lotteries authorized by Mississippi lottery law.
97-33-43. Lotteries; railroads; applicability of section to games or lotteries authorized by Mississippi lottery law.

Sec.	
97-33-45.	Lotteries; steamboats; applicability of section to games or lotteries authorized by Mississippi lottery law.
97-33-47.	Lotteries; acting as agent for; applicability of section to games or lotteries authorized by Mississippi lottery law.
97-33-49.	Raffles; applicability of section to games or lotteries authorized by Mississippi lottery law.

§ 97-33-1. Betting, gaming or wagering; exception from prohibition; penalty.

Except as otherwise provided in Section 97-33-8, if any person shall encourage, promote or play at any game, play or amusement, other than a fight or fighting match between dogs, for money or other valuable thing, or shall wager or bet, promote or encourage the wagering or betting of any money or other valuable things, upon any game, play, amusement, cockfight, Indian ball play or duel, other than a fight or fighting match between dogs, or upon the result of any election, event or contingency whatever, upon conviction thereof, he shall be fined in a sum not more than Five Hundred Dollars ($500.00); and, unless such fine and costs be immediately paid, shall be imprisoned for any period not more than ninety (90) days. However, this section shall not apply to betting, gaming or wagering:

(a) On a cruise vessel as defined in Section 27-109-1 whenever such vessel is in the waters within the State of Mississippi, which lie adjacent to the State of Mississippi south of the three (3) most southern counties in the State of Mississippi, including the Mississippi Sound, St. Louis Bay, Biloxi Bay and Pascagoula Bay, and in which the registered voters of the county in which the port is located have not voted to prohibit such betting, gaming or wagering on cruise vessels as provided in Section 19-3-79;

(b) In a structure located, in whole or in part, on shore in any of the three (3) most southern counties in the State of Mississippi in which the registered voters of the county have voted to allow such betting, gaming or wagering on cruise vessels as provided in Section 19-3-79, if:

(i) The structure is owned, leased or controlled by a person possessing a gaming license, as defined in Section 75-76-5, to conduct legal gaming on a cruise vessel under paragraph (a) of this section;

(ii) The part of the structure in which licensed gaming activities are conducted is located entirely in an area which is located no more than eight hundred (800) feet from the mean high-water line (as defined in Section 29-15-1) of the waters within the State of Mississippi, which lie adjacent to the State of Mississippi south of the three (3) most southern counties in the State of Mississippi, including the Mississippi Sound, St. Louis Bay, Biloxi Bay and Pascagoula Bay, or, with regard to Harrison County only, no farther north than the southern boundary of the right-of-way for U.S. Highway 90, whichever is greater; and

(iii) In the case of a structure that is located in whole or part on shore, the part of the structure in which licensed gaming activities are conducted shall lie adjacent to state waters south of the three (3) most southern counties in the State of Mississippi, including the Mississippi Sound, St. Louis Bay, Biloxi Bay and Pascagoula Bay. When the site upon which the structure is located consists of a parcel of real property, easements and rights-of-way for public streets and highways shall not be construed to interrupt the contiguous nature of the parcel, nor shall the footage contained within the easements and rights-of-way be counted in the calculation of the distances specified in subparagraph (ii);

(c) On a vessel as defined in Section 27-109-1 whenever such vessel is on the Mississippi River or navigable waters within any county bordering on the Mississippi River, and in which the registered voters of the county in which the port is located have not voted to prohibit such betting, gaming or wagering on vessels as provided in Section 19-3-79; or

(d) That is legal under the laws of the State of Mississippi.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 11(1); 1857, ch. 64, art. 134; 1871, § 2598; 1880, § 2844; 1892, § 1122; 1906, § 1203; Hemingway's 1917, § 933; 1930, § 960; 1942, § 2190; Laws, 1898, ch. 69; Laws, 1987, ch. 489, § 2; Laws, 1989, ch. 481, § 2; Laws, 1990, ch. 449, § 5; Laws, 1990, ch. 573, § 9; Laws, 1990 Ex Sess, ch. 45 § 148; Laws, 2005, 5th Ex Sess, ch. 16, § 3; Laws, 2013, ch. 410, § 2, eff from and after July 1, 2013.

Cross References — Municipal regulation of amusement and other devices, see § 21-19-33.

Elected or appointed official not to derive any pecuniary benefit as result of duties under this section, and penalties therefor, see § 25-4-119.

Taxation of vending and amusement machines, see §§ 27-27-1 et seq.

State athletic commission, see §§ 75-75-101 et seq.

Mississippi Gaming Control Act, see §§ 75-76-1 et seq.

Illegality of gambling contracts, generally, see § 87-1-1.

Operation of gaming devices in clubs, on boats, etc., as abatable nuisance, see § 95-3-25.

Minors being prohibited from entering pool room or billiard hall, see § 97-5-11.

Pin ball machines, etc., see § 97-33-7.

Prohibition of dog fights and the penalties with respect thereto, see § 97-41-19.

Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see § 97-43-1 et seq.

Special duty of officers to arrest gamblers, see § 99-3-25.

Requisites of indictment in gambling cases, see § 99-7-27.

Proceedings in gambling cases, see §§ 99-17-25 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. What constitutes gambling within statute.
3. Indictment.
4. —Proof as supporting allegations.
5. Sentence and punishment.

1. In general.

Mississippi Gaming Commission did not act in excess of its statutory authority in determining that Bernard Bayou was not legal gaming site and denying preliminary site approval; Commission regulation providing that Bernard Bayou is not within area authorized for gaming casino sites was reasonable interpretation of statute authorizing gaming. Mississippi Gaming Comm'n v. Board of Educ., 691 So. 2d 452, 1997 Miss. LEXIS 89 (Miss. 1997).

Mississippi Gaming Commission's decision to deny request for preliminary site approval for gaming operations on Bernard Bayou was not arbitrary and capricious; finding that Bernard Bayou was a bayou, and pursuant to Commission regulation, was not suitable place for gaming operations. Mississippi Gaming Comm'n v. Board of Educ., 691 So. 2d 452, 1997 Miss. LEXIS 89 (Miss. 1997).

A proposed site for a casino gambling operation was unlawful, and therefore the Mississippi Gaming Commission's order approving the site would be vacated, where the site was not on water but was on land which the applicants proposed to dredge, and it was not within waters "south of the three most southern counties." Mississippi Casino Operators Ass'n v. Mississippi Gaming Comm'n, 654 So. 2d 892, 1995 Miss. LEXIS 219 (Miss. 1995).

Code of 1906, § 2303 not impliedly repealed by Laws 1908, ch. 118. Ascher & Baxter v. Edward Moyse & Co., 101 Miss. 36, 57 So. 299, 1911 Miss. LEXIS 96 (Miss. 1911).

2. What constitutes gambling within statute.

A mere spectator at a game of chance is not, by his presence alone, guilty of encouraging the game within the purview of this section [Code 1942, § 2190]. Stubbs v. State, 206 Miss. 485, 40 So. 2d 256, 1949 Miss. LEXIS 274 (Miss. 1949).

Person paying 25¢ for privilege of rolling dice with chance of winning $1.00 or nothing, and owner of place to whom he paid money, held gambling. Eckles v. State, 108 Miss. 534, 66 So. 987, 1914 Miss. LEXIS 237 (Miss. 1914).

Playing poker with a three, five and ten-cent limit is gambling to the same extent as if the stakes were larger. Ford v. State, 86 Miss. 123, 38 So. 229, 1905 Miss. LEXIS 15 (Miss. 1905).

It is not within the statute for the loser at a game of billiards to pay, by agreement of the parties, the fee due for the use of the table. Blewett v. State, 34 Miss. 606, 1857 Miss. LEXIS 183 (Miss. 1857).

To bet on the result of an election in another state is indictable under the statute. Sharkey v. State, 33 Miss. 353, 1857 Miss. LEXIS 45 (Miss. 1857).

3. Indictment.

4. —Proof as supporting allegations.

Testimony that accused was "rolling the bones", had money in front of him and that others were present with money on display, was sufficient to justify jury finding that accused was violating this section [Code 1942, § 2190], it being unnecessary for the prosecution to show that the game had proceeded to the point where accused had made his point or that he had lost by turning up a seven. Stubbs v. State, 206 Miss. 485, 40 So. 2d 256, 1949 Miss. LEXIS 274 (Miss. 1949).

Evidence must show defendants' joint game, under indictment charging they played a game together. Reno v. State, 88 Miss. 583, 41 So. 7, 1906 Miss. LEXIS 162 (Miss. 1906).

Under an indictment charging that several persons "unlawfully did play. . . for money," etc., either may be convicted for playing with any person. Such indictment charges a separate offense against each. Lea v. State, 64 Miss. 294, 1 So. 244, 1886 Miss. LEXIS 59 (Miss. 1886).

If the indictment charge that accused played "for money," it must be shown that he was either directly or indirectly interested in the money wagered, or he cannot be convicted. Strawhern v. State, 37 Miss. 422, 1859 Miss. LEXIS 30 (Miss. 1859).

An indictment charging a bet on the result of an election in a particular state for presidential electors is not sustained by proof of a bet on the result of an election, in the state for president. The election of electors is distinct from the election of president. Gamble v. State, 35 Miss. 222, 1858 Miss. LEXIS 31 (Miss. 1858).

A bet upon the unknown result of an election, made after the election is held, is indictable; and proof thereof under an indictment which charges that the bet was made before the election, is proper and will maintain it. The time laid is immaterial. Terrall v. Adams, 23 Miss. 570, 1852 Miss. LEXIS 256 (Miss. 1852);

Miller v. State, 33 Miss. 356, 1857 Miss. LEXIS 46 (Miss. 1857).

5. Sentence and punishment.

This section [Code 1942, § 2190] does not prescribe two punishments in the alternative but a defendant convicted of gaming under this section may be sentenced to pay a fine and costs and stand committed until they are paid, as provided in Laws 1894, ch. 76 § 3, and may be worked on the county farm until such fine and costs are paid. Fuller v. State, 83 Miss. 30, 35 So. 214, 1903 Miss. LEXIS 9 (Miss. 1903).

OPINIONS OF THE ATTORNEY GENERAL

Conduct of a poker tournament constitutes gaming and gambling under Section 97-33-1 and the Gaming Control Act, and is prohibited unless conducted by a licensee of the Mississippi Gaming Commission. Janus, Mar. 25, 2005, A.G. Op. 05-0080.

RESEARCH REFERENCES

ALR.

Entrapment to commit offense with respect to gambling or lotteries. 31 A.L.R.2d 1212.

Admissibility, in prosecution for gambling or gaming offense, or evidence of other acts of gambling. 64 A.L.R.2d 823.

Criminal conspiracies as to gambling. 91 A.L.R.2d 1148.

Bridge as within gambling laws. 97 A.L.R.2d 1420.

Validity of criminal legislation making possession of gambling or lottery devices or paraphernalia presumptive or prima facie evidence of other incriminating facts. 17 A.L.R.3d 491.

Promotion schemes of retail stores as criminal offense under anti-gambling laws. 29 A.L.R.3d 888.

Validity and construction of statute exempting gambling operations carried on by religious, charitable, or other nonprofit organizations from general prohibitions against gambling. 42 A.L.R.3d 663.

Construction and application of state or municipal enactments relating to policy or numbers games. 70 A.L.R.3d 897.

Validity, construction, and application of statutes or ordinances involved in prosecutions for transmission of wagers or wagering information related to bookmaking. 53 A.L.R.4th 801.

Validity, construction, and application of statute or ordinance prohibiting or regulating use of messenger services to place wagers in pari-mutuel pool. 78 A.L.R.4th 483.

Am. Jur.

38 Am. Jur. 2d, Gambling §§ 22 et seq.

19 Am. Jur. Proof of Facts 647, Unlawful Gambling Games §§ 1 et seq.

CJS.

38 C.J.S., Gaming §§ 131 et seq.

§ 97-33-3. Gambling; penalties on certain officers; penalty for use of public money.

If a judge of any court, or a justice court judge, or attorney-general or district attorney, or a constable, sheriff, or any person charged by law with the custody of public money, shall violate the provisions of the foregoing section, such person so offending, on conviction thereof, shall be fined Five Hundred Dollars ($500.00), and be imprisoned in the county jail twenty (20) days. In case any public officer shall in any manner use or loan public money in his hands by virtue of his office, in any game, wager, or bet, on conviction thereof, his commission shall thereby be deemed vacated, and the vacancy supplied as in case of death, resignation, or removal from office.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 11(2); 1857, ch. 64, art. 135; 1871, § 2599; 1880, § 2845; 1892, § 1123; 1906, § 1204; Hemingway's 1917, § 934; 1930, § 961; 1942, § 2191; Laws, 1986, ch. 459, § 43, eff from and after July 1, 1986.

Cross References — Attorney general, see §§ 7-5-1 et seq.
State treasurer, see §§ 7-9-1 et seq.
Suit on official bond for embezzlement, see § 7-9-51.
Chancery court judges, see § 9-5-1.
Circuit court judges, see § 9-7-1.
County court judges, see §§ 9-9-1 et seq.
Penalty for constable's neglect of duty, see § 19-19-15.
Sheriffs, see §§ 19-25-1 et seq.
Removal of public officers from office, see § 25-5-1.
District attorneys, see §§ 25-31-1 et seq.
Tax collectors, see §§ 27-1-1 et seq.
Embezzlement by public officers and employees, see §§ 97-11-25 et seq.

RESEARCH REFERENCES

Am. Jur.
63C Am. Jur. 2d, Public Officers and Employees §§ 265, 345 et seq.

CJS.
38 C.J.S., Gaming §§ 131 et seq.

§ 97-33-5. Gambling; additional fine against winning gambler for amount won.

In a prosecution for gambling or gaming, in addition to penalties elsewhere provided, the jury shall find the amount won, and it shall be the duty of the court to enter judgment against the winning party for the amount so won, to be collected and paid over as fines.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 3(21); 1857, ch. 64, art. 144; 1871, § 2608; 1880, § 2854; 1892, § 1361; 1906, § 1433; Hemingway's 1917, § 1189; 1930, § 1213; 1942, § 2456.

Cross References — Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see § 97-43-1 et seq.
Another section derived from same 1942 code section, see § 99-7-27.

RESEARCH REFERENCES

Am. Jur.
12A Am. Jur. Pl & Pr Forms (Rev), Gambling, Forms 1 et seq.

§ 97-33-7. Gambling devices defined; prohibition; pin ball machines; penalties; exceptions.

(1) Except as otherwise provided in Section 97-33-8, it shall be unlawful for any person or persons, firm, copartnership or corporation to have in possession, own, control, display, or operate any cane rack, knife rack, artful dodger, punch board, roll down, merchandise wheel, slot machine, pinball

machine, or similar device or devices. Provided, however, that this section shall not be so construed as to make unlawful the ownership, possession, control, display or operation of any antique coin machine as defined in Section 27-27-12, or any music machine or bona fide automatic vending machine where the purchaser receives exactly the same quantity of merchandise on each operation of said machine. Any slot machine other than an antique coin machine as defined in Section 27-27-12 which delivers, or is so constructed as that by operation thereof it will deliver to the operator thereof anything of value in varying quantities, in addition to the merchandise received, and any slot machine other than an antique coin machine as defined in Section 27-27-12 that is constructed in such manner as that slugs, tokens, coins or similar devices are, or may be, used and delivered to the operator thereof in addition to merchandise of any sort contained in such machine, is hereby declared to be a gambling device, and shall be deemed unlawful under the provisions of this section. Provided, however, that pinball machines which do not return to the operator or player thereof anything but free additional games or plays shall not be deemed to be gambling devices, and neither this section nor any other law shall be construed to prohibit same.

(2) No property right shall exist in any person, natural or artificial, or be vested in such person, in any or all of the devices described herein that are not exempted from the provisions of this section; and all such devices are hereby declared to be at all times subject to confiscation and destruction, and their possession shall be unlawful, except when in the possession of officers carrying out the provisions of this section. It shall be the duty of all law enforcing officers to seize and immediately destroy all such machines and devices.

(3) A first violation of the provisions of this section shall be deemed a misdemeanor, and the party offending shall, upon conviction, be fined in any sum not exceeding Five Hundred Dollars ($500.00), or imprisoned not exceeding three (3) months, or both, in the discretion of the court. In the event of a second conviction for a violation of any of the provisions of this section, the party offending shall be subject to a sentence of not less than six (6) months in the county jail, nor more than two (2) years in the State Penitentiary, in the discretion of the trial court.

(4) Notwithstanding any provision of this section to the contrary, it shall not be unlawful to operate any equipment or device described in subsection (1) of this section or any gaming, gambling or similar device or devices by whatever name called while:

(a) On a cruise vessel as defined in Section 27-109-1 whenever such vessel is in the waters within the State of Mississippi, which lie adjacent to the State of Mississippi south of the three (3) most southern counties in the State of Mississippi, including the Mississippi Sound, St. Louis Bay, Biloxi Bay and Pascagoula Bay, and in which the registered voters of the county in which the port is located have not voted to prohibit such betting, gaming or wagering on cruise vessels as provided in Section 19-3-79;

(b) In a structure located, in whole or in part, on shore in any of the three (3) most southern counties in the State of Mississippi in which the registered voters of the county have voted to allow such betting, gaming or wagering on cruise vessels as provided in Section 19-3-79, if:

(i) The structure is owned, leased or controlled by a person possessing a gaming license, as defined in Section 75-76-5, to conduct legal gaming on a cruise vessel under paragraph (a) of this subsection;

(ii) The part of the structure in which licensed gaming activities are conducted is located entirely in an area which is located no more than eight hundred (800) feet from the mean high-water line (as defined in Section 29-15-1) of the waters within the State of Mississippi, which lie adjacent to the State of Mississippi south of the three (3) most southern counties in the State of Mississippi, including the Mississippi Sound, St. Louis Bay, Biloxi Bay and Pascagoula Bay, or, with regard to Harrison County only, no farther north than the southern boundary of the right-of-way for U.S. Highway 90, whichever is greater; and

(iii) In the case of a structure that is located in whole or part on shore, the part of the structure in which licensed gaming activities are conducted shall lie adjacent to state waters south of the three (3) most southern counties in the State of Mississippi, including the Mississippi Sound, St. Louis Bay, Biloxi Bay and Pascagoula Bay. When the site upon which the structure is located consists of a parcel of real property, easements and rights-of-way for public streets and highways shall not be construed to interrupt the contiguous nature of the parcel, nor shall the footage contained within the easements and rights-of-way be counted in the calculation of the distances specified in subparagraph (ii);

(c) On a vessel as defined in Section 27-109-1 whenever such vessel is on the Mississippi River or navigable waters within any county bordering on the Mississippi River, and in which the registered voters of the county in which the port is located have not voted to prohibit such betting, gaming or wagering on vessels as provided in Section 19-3-79; or

(d) That is legal under the laws of the State of Mississippi.

(5) Notwithstanding any provision of this section to the contrary, it shall not be unlawful (a) to own, possess, repair or control any gambling device, machine or equipment in a licensed gaming establishment or on the business premises appurtenant to any such licensed gaming establishment during any period of time in which such licensed gaming establishment is being constructed, repaired, maintained or operated in this state; (b) to install any gambling device, machine or equipment in any licensed gaming establishment; (c) to possess or control any gambling device, machine or equipment during the process of procuring or transporting such device, machine or equipment for installation on any such licensed gaming establishment; or (d) to store in a warehouse or other storage facility any gambling device, machine, equipment, or part thereof, regardless of whether the county or municipality in which the warehouse or storage facility is located has approved gaming aboard cruise vessels or vessels, provided that such device, machine or equipment is operated only in a county or municipality that has approved gaming aboard cruise vessels or vessels. Any gambling device, machine or equipment that is owned,

possessed, controlled, installed, procured, repaired, transported or stored in accordance with this subsection shall not be subject to confiscation, seizure or destruction, and any person, firm, partnership or corporation which owns, possesses, controls, installs, procures, repairs, transports or stores any gambling device, machine or equipment in accordance with this subsection shall not be subject to any prosecution or penalty under this section. Any person constructing or repairing such cruise vessels or vessels within a municipality shall comply with all municipal ordinances protecting the general health or safety of the residents of the municipality.

HISTORY: Codes, 1930, § 821; 1942, § 2047; Laws, 1924, ch. 339; Laws, 1938, ch. 353; Laws, 1950, ch. 357; Laws, 1990, ch. 573, § 10; Laws, 1990 Ex Sess, ch. 45 § 149; Laws, 1992, ch. 371, § 5; 1994, ch. 530, § 1 eff from and after July 1, 1994; Laws, 2005, 5th Ex Sess, ch. 16, § 4; Laws, 2013, ch. 410, § 3, eff from and after July 1, 2013.

Cross References — Municipal regulation of amusement and other devices, see § 21-19-33.

Governing authorities not authorized to regulate gambling equipment that is within corporate limits in accordance with this section, see § 21-19-33.

Elected or appointed official not to derive any pecuniary benefit as result of duties under this section, and penalties therefor, see § 25-4-119.

Unlawful business not legalized by issuance of privilege license or payment of tax, see § 27-15-221.

Vending and amusement machines, see §§ 27-27-1 et seq.

Mississippi Gaming Control Act, see §§ 75-76-1 et seq.

Illegality of gambling contracts, generally, see § 87-1-1.

Prohibition of minors from entering pool room or billiard hall, see § 97-5-11.

Use of slugs, etc., in automatic coin machines, see § 97-21-11.

Betting on any game, play or amusement, see § 97-33-1.

Exceptions provided for in this section applicable to keeping or exhibiting of games or gaming tables, see § 97-33-9.

Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see § 97-43-1 et seq.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

ANALYSIS

1. Slot machines generally.
2. Character of slot machine as gambling device.
3. Search, seizure and confiscation.
4. —Replevin after seizure.
5. Issuance of privilege license or payment of tax.
6. Miscellaneous.

1. Slot machines generally.

The definition of a "slot machine" contained in Miss. Code Ann. § 75-76-5(ff) is applicable to Miss. Code Ann. § 97-33-7, which prohibits the possession or use of slot machines. Miss. Gaming Comm'n v. Six Elec. Video Gambling Devices, 792 So. 2d 321, 2001 Miss. App. LEXIS 224 (Miss. Ct. App. 2001).

A machine was a slot machine where (1) it dispensed a two-minute emergency long distance calling card, good only for one call no matter the time actually used, (2) with each card, the purchaser also received a game piece, which had a bar code on the back that was read by the machine as the card was being dispensed, (3) the display on the machine then simulated a slot machine by spinning nine squares, (4) after a few moments, the display showed the same combination of squares as on the game piece, (5) again simulating a slot machine, the machine lit up and played music if the patron was a winner, and (6) a cashier at the store verified the winning card and then paid the prize money, which could be in the amount of one dollar up to $500. Miss. Gaming Comm'n v. Six Elec. Video Gambling Devices, 792 So. 2d 321, 2001 Miss. App. LEXIS 224 (Miss. Ct. App. 2001).

But where an injunction has been issued against the defendant for violation of gaming laws, his mere possession of slot machines was a violation of the injunction despite the fact that the machines were not operated. Stevens v. State, 225 Miss. 48, 82 So. 2d 645, 1955 Miss. LEXIS 557 (Miss. 1955).

It was not the purpose of this statute [Code 1942, § 2047], or similar statutes, to condemn a machine as being a slot machine simply because its initial operation is by way of the insertion of a coin in a slot; but the maxim noscitur a sociis should be applied, and in looking to the associated devices or machines or games mentioned in such statutes, the condemnation is against those which, in their nature, are gambling devices. Rouse v. Sisson, 190 Miss. 276, 199 So. 777, 1941 Miss. LEXIS 46 (Miss. 1941).

The mere possession of a slot machine or even its operation for amusement and not for profit does not constitute a crime. King v. McCrory, 179 Miss. 162, 175 So. 193, 1937 Miss. LEXIS 31 (Miss. 1937).

2. Character of slot machine as gambling device.

Business owner did not meet his burden of showing that he was being deprived of his property without due process of law because the criminal statutes, Miss. Code Ann. § 97-33-7 and Miss. Code Ann. § 97-33-17, were not too broad in their description of what caused a video game to be an illegal slot machine, and a person with ordinary intelligence would have little difficulty determining what exactly was prohibited; Mississippi did not extend a property right to illegal gambling machines, such that there were no due process rights violations, and Miss. Code Ann. § 97-33-7(2) was not unconstitutionally vague. Trainer v. State, 930 So. 2d 373, 2006 Miss. LEXIS 178 (Miss. 2006).

Where the elements of consideration and chance are present, Miss. Code Ann. § 75-76-5(ff) requires only that machines possess the "potential for reward" to be considered a slot machine subject to seizure and destruction under Miss. Code Ann. § 97-33-7(1). Miss. Gaming Comm'n v. Henson, 800 So. 2d 110, 2001 Miss. LEXIS 225 (Miss. 2001).

State gaming commission properly seized amusement devices based on their illegality, as the machines possessed "potential for reward" by providing credits for free additional games even though they did not necessarily provide an instant payoff. Miss. Gaming Comm'n v. Henson, 800 So. 2d 110, 2001 Miss. LEXIS 225 (Miss. 2001).

A machine operated at a truck stop was an illegal slot machine where the machine operated as follows: (1) for one dollar, the machine dispensed a two minute emergency long distance calling card, good only for one call no matter the time actually used, (2) with each card, the purchaser also received a game piece which had a bar code on the back that was read by the machine as it was dispensed, (3) the display on the machine then simulated a slot machine by spinning nine squares, (4) after a few moments, the display showed the same combination of squares as on the game piece, (5) again simulating a slot machine, the machine lit up and played music if the patron was a winner, and (6) a cashier at the store verified the winning card and then paid the prize money, which could be in the amount of one dollar up to five hundred dollars. Mississippi Gaming Comm'n v. Six Elec. Video Gambling Devices & Gene Gullick, 2001 Miss. App. LEXIS 13 (Miss. Ct. App. Jan. 9, 2001), op. withdrawn, sub. op., 792 So. 2d 321, 2001 Miss. App. LEXIS 224 (Miss. Ct. App. 2001).

Despite the fact that § 2047, Code 1942, specifically provides that pinball machines which do not return to the operator or player anything but free additional games or plays shall not be deemed gambling devices, such machines are still subject to the forfeiture and seizure under federal statutes. United States v. Various Gambling Devices, 368 F. Supp. 661, 1973 U.S. Dist. LEXIS 10461 (N.D. Miss. 1973).

The fact that so-called "free-game" pinball machines are legal under Mississippi law does not render them exempt from the registration and record keeping requirements of 15 USCS 1173. United States v. Various Gambling Devices, 368 F. Supp. 661, 1973 U.S. Dist. LEXIS 10461 (N.D. Miss. 1973).

Although it appeared that upon the trial a slot machine did not operate when tested, the evidence was sufficient to support the verdict of the jury that it was a gaming or gambling device. Brady v. State, 229 Miss. 677, 91 So. 2d 751, 1957 Miss. LEXIS 314 (Miss. 1957).

A machine which, upon the deposit of a coin, presents a question with a number of alternate answers only one of which is correct, whereupon the player has twenty seconds in which to depress a key indicating the number of the answer selected by him, and which, if his answer is correct, automatically awards him a cash prize in an amount of which he is advised before commencement of the play, and which in any event delivers the card containing the question, on the reverse side of which is printed the correct answer, is not a gambling device within the purview of this statute [Code 1942, § 2047], since the element of uncertainty is not in the operation of the machine but in the scope of the player's knowledge. Rouse v. Sisson, 190 Miss. 276, 199 So. 777, 1941 Miss. LEXIS 46 (Miss. 1941).

Slot machine, played for a "jackpot," operating by placing 5-cent coin in slot and pulling a lever for which purchaser could get a piece of gum, or sometimes 10 or 15 cents, was a "gambling device." Atkins v. State, 178 Miss. 804, 174 So. 52, 1937 Miss. LEXIS 242 (Miss. 1937).

Vending machine held a gambling device; a "slot machine or similar device." Crippen v. Mint Sales Co., 139 Miss. 87, 103 So. 503, 1925 Miss. LEXIS 113 (Miss. 1925).

3. Search, seizure and confiscation.

As computer terminals seized from an internet cafe were illegal slot machines, cafe owners had no property rights in them pursuant to Miss. Code Ann. § 97-33-7(2); thus, a justice court had no legal basis to order their return to the owners. Moore v. Miss. Gaming Comm'n, 64 So. 3d 537, 2011 Miss. App. LEXIS 169 (Miss. Ct. App. 2011).

National guardsmen, acting under an executive order of the governor, and a search warrant issued by the county judge, directed to any officer of the county, had authority to make a search of the accused's premises wherein a slot machine was found. Brady v. State, 229 Miss. 677, 91 So. 2d 751, 1957 Miss. LEXIS 314 (Miss. 1957).

Where the recitals in the executive order, empowering the adjutant general to order out national guardsmen for the purpose of seeing that laws were faithfully executed in Jones County, made out a prima facie case justifying the governor's actions, the duty of showing that there was not such breakdown of law enforcement conditions as to justify this action was upon the accused, who was complaining of the search of the premises wherein a slot machine was found. Brady v. State, 229 Miss. 677, 91 So. 2d 751, 1957 Miss. LEXIS 314 (Miss. 1957).

In a prosecution for the unlawful possession of a slot machine found upon the accused's premises during a search by national guardsmen under authority of an executive order, and a search warrant issued by the county judge, it was not error to introduce in evidence a copy of the executive order, certified by the secretary of state, since whatever right, if any, accused had to subpoena witnesses and contradict the facts set forth in the original executive order applied as well to the copy as to the original. Brady v. State, 229 Miss. 677, 91 So. 2d 751, 1957 Miss. LEXIS 314 (Miss. 1957).

The legislature has the power to render the possession or ownership of slot machines and pay-off tables unlawful, and to provide for their seizure and destruction, without violating the due process clause of the Fourteenth Amendment to the Constitution of the United States. Clark v. Holden, 191 Miss. 7, 2 So. 2d 570, 1941 Miss. LEXIS 141 (Miss. 1941).

The fact that slot machines and other gambling devices, when seized, were contained in their original crates and were designed for operation in another jurisdiction where their operation was lawful would not make their seizure and destruction under the provision of this section [Code 1942, § 2047] wrongful, since the statute makes the possession or ownership thereof unlawful. Clark v. Holden, 191 Miss. 7, 2 So. 2d 570, 1941 Miss. LEXIS 141 (Miss. 1941).

Where a slot machine was not a gambling device within the purview of this statute [Code 1942, § 2047], the owner thereof was entitled to an injunction against seizure and confiscation of such machine as a gambling device. Rouse v. Sisson, 190 Miss. 276, 199 So. 777, 1941 Miss. LEXIS 46 (Miss. 1941).

A city marshal had no authority, without affidavit or search warrant, to seize slot machine which was not operated by person keeping it, since statute does not contemplate that officers may seize property not contraband without a warrant, unless such property is being used by persons in such manner as to make out a crime. King v. McCrory, 179 Miss. 162, 175 So. 193, 1937 Miss. LEXIS 31 (Miss. 1937).

4. —Replevin after seizure.

Since this section [Code 1942, § 2047] makes the possession or ownership of slot machines and other similar gambling devices and apparatus unlawful it necessarily follows that replevin will not lie for the recovery in which no property right can exist in the plaintiff and the possession of which by him is made unlawful. Clark v. Holden, 191 Miss. 7, 2 So. 2d 570, 1941 Miss. LEXIS 141 (Miss. 1941).

An owner of a slot machine which was kept on premises of another not for purpose of operating it could replevy such machine from city marshal who, while searching premises for intoxicating liquors, found machine and without taking any legal papers or making any affidavit took the machine into his possession, where marshal could not show that machine was being used for purpose of gaming. King v. McCrory, 179 Miss. 162, 175 So. 193, 1937 Miss. LEXIS 31 (Miss. 1937).

5. Issuance of privilege license or payment of tax.

A copy of a record in the office of the United States District Director of Internal Revenue showing the issuance by the director of a license for the accused's premises to operate a coin-operated gaming device, which was duly certified by the Director, was properly authenticated and admissible in a prosecution for the unlawful possession of a slot machine notwithstanding accused's objection that the admission of the certified copy, without the witness being on the stand, deprived the accused of the right of cross-examination, since it would appear there was no rule prohibiting accused from subpoenaing and using that official as a witness. Brady v. State, 229 Miss. 677, 91 So. 2d 751, 1957 Miss. LEXIS 314 (Miss. 1957).

In prosecution for unlawfully operating a slot machine, admission of testimony of payment of privilege tax was not error, notwithstanding evidence as to privilege tax being paid is not ordinarily admissible, where payment was a stipulated fact and court instructed jury that payment did not justify operation of slot machine as a gambling device. State v. Stigler, 179 Miss. 276, 175 So. 194, 1937 Miss. LEXIS 32 (Miss. 1937).

Issuance of license held not to create an estoppel against prosecution for crime under statute making it unlawful to operate slot machines which do not indicate in advance what purchaser is to receive. Atkins v. State, 178 Miss. 804, 174 So. 52, 1937 Miss. LEXIS 242 (Miss. 1937).

In view of legislative history, suit to collect privilege tax on slot machine for year 1924 cannot be maintained (Code 1906, § 3786; Laws 1914, ch. 110; Laws 1920, ch. 104 §§ 7, 64; Laws 1922, ch. 239 §§ 1-3; Laws 1924, ch. 120, § 339.). Scott v. Hossley, 142 Miss. 611, 107 So. 760, 1926 Miss. LEXIS 116 (Miss. 1926).

6. Miscellaneous.

A justice of the peace has no jurisdiction, other than to require bail for appearance in circuit court to await action of grand jury, on an affidavit charging a second offense, such second offense being the commission of a felony. Ellis v. State, 203 Miss. 330, 33 So. 2d 837, 1948 Miss. LEXIS 273 (Miss. 1948).

In a prosecution for burglary, which involved the stealing of a slot machine containing a large number of nickels, it was immaterial whether or not the slot machine was "property," since the money in the machine was property, and was not withdrawn from that category by a statute under which the money could have been seized by any police officer. Hawkins v. State, 193 Miss. 586, 10 So. 2d 678, 1942 Miss. LEXIS 154 (Miss. 1942).

In prosecution for unlawfully operating a slot machine, instructing that to convict, jury must believe beyond reasonable doubt that some person other than accused played or operated machine was not error, since it was not unlawful, per se, for owner of slot machine to keep it and operate it for amusement and not as a gambling device. State v. Stigler, 179 Miss. 276, 175 So. 194, 1937 Miss. LEXIS 32 (Miss. 1937).

OPINIONS OF THE ATTORNEY GENERAL

If gambling devices are stored in warehouse located in county or municipality that has not approved gaming and devices are intended for ultimate delivery to vessel on which gambling is legal, then such storage does constitute part of "the process of procuring or transporting such device" and such possession is legal under subsection (5) of this section provided that license from Gaming Commission is obtained pursuant to Section 75-76-79. Guice, August 6, 1993, A.G. Op. #93-0403.

RESEARCH REFERENCES

ALR.

Coin-operated pinball machine or similar device, played for amusement only or confining reward to privilege of free replays, as prohibited or permitted by anti-gambling laws. 89 A.L.R.2d 815.

Paraphernalia or appliances used for recording gambling transactions or receiving or furnishing gambling information as gaming "devices" within criminal statute or ordinance. 1 A.L.R.3d 726.

Constitutionality of statutes providing for destruction of gambling devices. 14 A.L.R.3d 366.

Validity of criminal legislation making possession of gambling or lottery devices or paraphernalia presumptive or prima facie evidence of other incriminating facts. 17 A.L.R.3d 491.

Right to recover money lent for gambling purposes. 74 A.L.R.5th 369.

Am. Jur.

38 Am. Jur. 2d, Gambling §§ 1 et seq.

19 Am. Jur. Proof of Facts 647, Unlawful Gambling Games §§ 1 et seq.

CJS.

38 C.J.S., Gaming §§ 1 et seq.

Law Reviews.

Symposium: Gaming Law and Technology: Gambling in the Twenty-First Century: Judicial Resolution of Current Issues, 74 Miss. L.J. 779, Winter, 2005.

§ 97-33-8. Illegal gambling; Internet sweepstakes cafes prohibited.

(1) The provisions of this section are intended to clarify that the operation of "Internet sweepstakes cafes" is an illegal gambling activity under state law.

(2) It shall be unlawful for any person or entity to possess, own, control, display, operate or have a financial interest in an electronic video monitor that:

(a) Is offered or made available to a person to play or participate in a simulated gambling program in return for direct or indirect consideration, including consideration associated with a product, service or activity other than the simulated gambling program; and

(b) The person who plays or participates in the simulated gambling program may become eligible to win, redeem or otherwise obtain a cash or cash-equivalent prize, whether or not the eligibility for or value of the prize is determined by or has any relationship to the outcome or play of the program.

(3) As used in this section, the following words and phrases shall have the meanings ascribed in this subsection, unless the context clearly indicates otherwise:

(a) "Simulated gambling program" means any method intended to be used by a person playing, participating or interacting with an electronic video monitor that is offered by another person or entity; that directly or indirectly implements the predetermination of a cash or cash-equivalent prize, or otherwise connects the player with the cash or cash-equivalent prize; and that is not legal under the Mississippi Gaming Control Act.

(b) "Consideration associated with a product, service or activity other than the simulated gambling program" means money or other value collected for a product, service or activity that is offered in any direct or indirect relationship to playing or participating in the simulated gambling program. The term includes consideration paid for Internet access or computer time, or a sweepstakes entry.

(c) "Electronic video monitor" means any unit, mechanism, computer or other terminal, or device that is capable of displaying moving or still images.

(4) Any person or entity violating the provisions of this section, upon conviction, shall be guilty of a misdemeanor and fined not more than One Thousand Dollars ($1,000.00) or imprisoned for not less than one (1) year, or both.

(5) The provisions of this section shall not apply to:

(a) Any lawful activity that is conducted for the primary purpose of entertaining children under the age of eighteen (18) years, during which money is paid for a token or chip that is used to play an electronic or other game, with the winner of the game earning tickets that can be exchanged for prizes;

(b) Any lawful marketing promotion, contest, prize or sweepstakes that is designed to attract consumer attention to a specific product or service which is offered for sale by the manufacturer, distributor, vendor or retailer of the product or service; or

(c) Any promotional activity as defined in Section 75-76-5 that is conducted by a gaming licensee.

HISTORY: Laws, 2013, ch. 410, § 1, eff from and after July 1, 2013.

§ 97-33-9. Gambling; keeping, exhibiting, etc. games or gaming tables; exceptions; applicability of section to games or lotteries authorized by Mississippi lottery law.

Except as otherwise provided in Section 97-33-8, if any person shall be guilty of keeping or exhibiting any game or gaming table commonly called A.B.C. or E.O. roulette or rowley-powley, or rouge et noir, roredo, keno, monte, or any faro-bank, or other game, gaming table, or bank of the same or like kind or any other kind or description under any other name whatever, or shall be in any manner either directly or indirectly interested or concerned in any gaming tables, banks, or games, either by furnishing money or articles for the purpose of carrying on the same, being interested in the loss or gain of said table, bank or games, or employed in any manner in conducting, carrying on, or exhibiting said gaming tables, games, or banks, every person so offending and being thereof convicted, shall be fined not less than Twenty-five Dollars ($25.00) nor more than Two Thousand Dollars ($2,000.00), or be imprisoned in the county jail not longer than two (2) months, or by both such fine and imprisonment, in the discretion of the court. Nothing in this section shall apply to any person who owns, possesses, controls, installs, procures, repairs or transports any gambling device, machine or equipment in accordance with subsection (4) of Section 97-33-7 or Section 75-76-34.

This section shall not apply to the operation of any game or lottery authorized by Chapter 115, Title 27.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 3(11); 1857, ch. 64, art. 136; 1871, § 2600; 1880, § 2846; 1892, § 1124; 1906, § 1205; Hemingway's 1917, § 935; 1930, § 962; 1942, § 2192; Laws, 1896, ch. 105; Laws, 1990, ch. 573, § 11; Laws, 1991, ch. 543, § 4; Laws, 2013, ch. 410, § 4, eff from and after July 1, 2013; Laws, 2018, 1st Ex Sess, ch. 2, § 53, eff from and after September 1, 2018.

Amendment Notes — The 2018 1st Extraordinary Session amendment, effective September 1, 2018, added the last paragraph.

Cross References — Elected or appointed official not to derive any pecuniary benefit as result of duties under this section, and penalties therefor, see § 25-4-119.

Operation of gaming devices in clubs, on boats, etc., as abatable nuisance, see § 95-3-25.

Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see § 97-43-1 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Indictment.
3. Evidence.

1. In general.

An agent of the alcoholic beverage control division of the state tax commission does not have the authority to serve a search warrant issued for the purpose of making a search for illegal gambling equipment. Wright v. State, 231 So. 2d 777, 1970 Miss. LEXIS 1603 (Miss. 1970).

Supreme court would not interfere with trial court's discretion in overruling motion for severance made by seven defendants charged with being interested in gambling table. Boyd v. State, 177 Miss. 34, 170 So. 671, 1936 Miss. LEXIS 247 (Miss. 1936).

Under this section [Code 1942, § 2192] the mere act of keeping and exhibiting a gaming table is not a crime; the unlawful purpose of keeping the table must be shown; there must be facts which make the keeping or exhibiting unlawful. Rawls v. State, 70 Miss. 739, 12 So. 584, 1893 Miss. LEXIS 10 (Miss. 1893).

2. Indictment.

Indictment charging that defendants were interested in loss or gain of gambling table held not demurrable as charging more than one offense in one count by referring to "games of chance," since offense charged did not end by playing of one game, but was continuous. Boyd v. State, 177 Miss. 34, 170 So. 671, 1936 Miss. LEXIS 247 (Miss. 1936).

Indictment held not bad for duplicity. Ross v. State, 135 Miss. 862, 101 So. 289, 1924 Miss. LEXIS 83 (Miss. 1924).

An indictment under this section [Code 1942, § 2192] held not demurrable because it improperly charged the offense as having been "feloniously" committed. Brister v. State, 86 Miss. 461, 38 So. 678, 1905 Miss. LEXIS 72 (Miss. 1905).

An indictment under this section [Code 1942, § 2192] which merely charges that defendant "was interested in a gaming table" is fatally defective in that it fails to charge that he was interested in the loss or gain of the table as required by the statute. Brazele v. State, 86 Miss. 286, 38 So. 314, 1905 Miss. LEXIS 28 (Miss. 1905).

3. Evidence.

In a prosecution for illegal possession of gambling devices, where the evidence was objected to on the ground of an illegal search, but the defense did not specifically object to the admission of illegal gambling equipment on the ground that the alcoholic beverage control agent lacked authority to serve a search warrant issued for the search for illegal gambling devices, under the plain error rule and in the interest of the equal administration of justice, a prior holding that such agent did not have such authority would be applied. Wright v. State, 231 So. 2d 777, 1970 Miss. LEXIS 1603 (Miss. 1970).

In prosecution of seven defendants for being interested in gambling table, evidence as to gaming on occasions subsequent to first occasion admitted when all defendants but one participated in furtherance of game held not admissible, where evidence as to subsequent occasions disclosed separate offenses in commission of which some of the defendants did not participate. Boyd v. State, 177 Miss. 34, 170 So. 671, 1936 Miss. LEXIS 247 (Miss. 1936).

Evidence held insufficient to sustain conviction as to defendant who played on table, but as to whom evidence contained nothing to indicate that he was at any time interested in loss or gain of table. Boyd v. State, 177 Miss. 34, 170 So. 671, 1936 Miss. LEXIS 247 (Miss. 1936).

Evidence examined and held to show that defendant was the lessee and occupant of the room in which the gambling was conducted. Ford v. State, 86 Miss. 123, 38 So. 229, 1905 Miss. LEXIS 15 (Miss. 1905).

RESEARCH REFERENCES

ALR.

Requirement of 18 USCS § 1955, prohibiting illegal gambling businesses, that such businesses involve five or more persons. 55 A.L.R. Fed. 778.

Am. Jur.

38 Am. Jur. 2d, Gambling §§ 64 et seq.

19 Am. Jur. Proof of Facts 647, Unlawful Gambling Games §§ 1 et seq.

CJS.

38 C.J.S., Gaming §§ 137 et seq.

§ 97-33-11. Gambling; clubs not to have interest in gaming; each member fined; grand jury investigation; applicability of section to games or lotteries authorized by Mississippi lottery law.

It shall not be lawful for any association of persons of the character commonly known as a "club," whether such association be incorporated or not, in any manner, either directly or indirectly, to have any interest or concern in any gambling tables, banks, or games, by means of what is sometimes called a "rake-off" or "take-out," or by means of an assessment upon certain combinations, or hands at cards, or by means of a percentage extracted from players, or an assessment made upon, or a contribution from them, or by any other means, device or contrivance whatsoever. It shall not be lawful for such an association to lend or advance money or any other valuable thing to any person engaged or about to engage in playing any game of chance prohibited by law, or to become responsible directly or indirectly for any money or other valuable thing lost, or which may be lost, by any player in any such game. If any such association shall violate any of the provisions of this section each and every member thereof shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined in a sum not more than Five Hundred Dollars ($500.00); and unless such fine and costs be immediately paid, shall be imprisoned in the county jail for not less than five (5) nor more than twenty (20) days. Each grand jury shall cause such of the members of such an association as it may choose to appear before them and submit to examination touching the observance or nonobservance by such association of the provisions hereof.

This section shall not apply to the operation of any game or lottery authorized by Chapter 115, Title 27.

HISTORY: Codes, 1906, § 1206; Hemingway's 1917, § 936; 1930, § 963; 1942, § 2193; Laws, 2018, 1st Ex Sess, ch. 2, § 54, eff from and after September 1, 2018.

Amendment Notes — The 2018 1st Extraordinary Session amendment, effective September 1, 2018, in the first paragraph, inserted "($500.00)", "(5)" and "(20)" in the next-to-last sentence; added the last paragraph; and made minor punctuation changes.

Cross References — Operation of gaming devices in clubs, on boats, etc., as abatable nuisance, see § 95-3-25.

Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see § 97-43-1 et seq.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

Club, boat or place where liquor is found as abatable nuisance, see § 99-27-23.

RESEARCH REFERENCES

ALR.

Criminal liability of member or agent of private club or association, or of owner or lessor of its premises, for violation of state or local liquor or gambling laws thereon. 98 A.L.R.3d 694.

Am. Jur.

38 Am. Jur. 2d, Gambling §§ 64 et seq.

CJS.

38 C.J.S., Gaming §§ 150 et seq.

§ 97-33-13. Gambling; building owners, lessees, etc. not to permit gambling; applicability of section to games or lotteries authorized by Mississippi lottery law.

Any owner, lessee, or occupant of any outhouse or other building, who shall knowingly permit or suffer any of the before mentioned tables, banks, or games, or any other game prohibited by law, to be carried on, kept, or exhibited in his said house or other building, or on his lot or premises, being thereof convicted, shall be fined not less than One Hundred Dollars ($100.00) nor more than Two Thousand Dollars ($2,000.00).

This section shall not apply to the operation of any game or lottery authorized by Chapter 115, Title 27.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 3(12); 1857, ch. 64, art. 138; 1871, § 2602; 1880, § 2848; 1892, § 1126; 1906, § 1208; Hemingway's 1917, § 938; 1930, § 965; 1942, § 2195; Laws, 2018, 1st Ex Sess, ch. 2, § 55, eff from and after September 1, 2018.

Amendment Notes — The 2018 1st Extraordinary Session amendment, effective September 1, 2018, added the last paragraph.

Cross References — Slot machines and other gambling devices, see § 97-33-7.

Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see § 97-43-1 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Indictment.
3. Evidence.

1. In general.

City had power to pass an ordinance making it an offense against the municipality to violate Code 1906, § 1208. Rosetto v. Bay St. Louis, 97 Miss. 409, 52 So. 785, 1910 Miss. LEXIS 271 (Miss. 1910).

Playing poker with a three, five and ten-cent limit is gaming within the meaning of Code 1892, § 1126. Ford v. State, 86 Miss. 123, 38 So. 229, 1905 Miss. LEXIS 15 (Miss. 1905).

The lessee of a building who has assigned his term as to a portion thereof, and retains no control over such portion, cannot be held guilty under this section [Code 1942, § 2195], if his assignee, even with his knowledge, permit games to be carried on in such portion in violation of the section. Diebel v. State, 68 Miss. 725, 9 So. 354, 1891 Miss. LEXIS 11 (Miss. 1891).

2. Indictment.

Indictment charging that accused feloniously suffered games of chance to be played with dice for money in a house occupied by her as a dwelling, contrary to the statute, sufficiently charges the statutory offense and is not violated by the use of the word "feloniously." Brister v. State, 86 Miss. 461, 38 So. 678, 1905 Miss. LEXIS 72 (Miss. 1905).

3. Evidence.

Evidence obtained by coroner under illegal warrant for search and seizure of intoxicating liquor was inadmissible in prosecution for permitting games of chance to be played for money on defendant's premises. Millwood v. State, 198 Miss. 485, 23 So. 2d 496, 1945 Miss. LEXIS 219 (Miss. 1945).

Evidence that defendant's house had the reputation of being a gambling house was inadmissible, being hearsay. Rosetto v. Bay St. Louis, 97 Miss. 409, 52 So. 785, 1910 Miss. LEXIS 271 (Miss. 1910).

Evidence that a door opened from the store into the room, of which defendant alone had the key, that he would open it at request, that it was necessary to ask permission of him to enter, and that he kept goods stored therein, was sufficient to show that he was the lessee and occupant of the room. Ford v. State, 86 Miss. 123, 38 So. 229, 1905 Miss. LEXIS 15 (Miss. 1905).

RESEARCH REFERENCES

ALR.
Gambling in private residence as prohibited or permitted by anti-gambling laws. 27 A.L.R.3d 1074.

Am. Jur.
38 Am. Jur. 2d, Gambling §§ 91 et seq.

CJS.
38 C.J.S., Gaming §§ 150 et seq.

§ 97-33-15. Gambling; hotel, tavern and boarding-house keepers to inform on gamblers.

If any guest or other person shall play at any game, bank, or table contrary to law, in a tavern, hotel, or boarding-house, or any outhouse, or under any booth, arbor, or other place upon the premises in possession of any tavern, hotel, or boarding-house keeper, and the keeper of the tavern, hotel, or boarding-house shall not forthwith give information of the offense, together with the names of the offenders, to some justice of the peace of his county, and prosecute the same, he shall, upon conviction thereof, be fined not less than twenty dollars nor more than one hundred dollars.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 3(18); 1857, ch. 64, art. 137; 1871, § 2601; 1880, § 2847; 1892, § 1126; 1906, § 1207; Hemingway's 1917, § 937; 1930, § 964; 1942, § 2194.

Editor's Notes — Pursuant to Miss. Const., Art. 6, § 171, all reference in the Mississippi Code to justice of the peace shall mean justice court judge.
Cross References — Slot machines and other gambling devices, see § 97-33-7.
Applicability of the Racketeer Influenced and Corrupt Organization Act of this section, see §§ 97-43-1 et seq.

RESEARCH REFERENCES

Am. Jur.
38 Am. Jur. 2d, Gambling § 136.

CJS.
38 C.J.S., Gaming §§ 150 et seq.

§ 97-33-17. Gambling; money and appliances forfeited; exceptions.

(1) All monies exhibited for the purpose of betting or alluring persons to bet at any game, and all monies staked or betted, shall be liable to seizure by any sheriff, constable, or police officer, together with all the appliances used or kept for use in gambling, or by any other person; and all the monies so seized shall be accounted for by the person making the seizure, and all appliances seized shall be destroyed; provided, however, this section shall not apply to betting, gaming or wagering on:

(a) A cruise vessel as defined in Section 27-109-1 whenever such vessel is in the waters within the State of Mississippi, which lie adjacent to the State of Mississippi south of the three (3) most southern counties in the State of Mississippi, including the Mississippi Sound, St. Louis Bay, Biloxi

Bay and Pascagoula Bay, and in which the registered voters of the county in which the port is located have not voted to prohibit such betting, gaming or wagering on cruise vessels as provided in Section 19-3-79;

(b) In a structure located in whole or in part on shore in any of the three (3) most southern counties in the State of Mississippi in which the registered voters of the county have voted to allow such betting, gaming or wagering on cruise vessels as provided in Section 19-3-79, if:

(i) The structure is owned, leased or controlled by a person possessing a gaming license, as defined in Section 75-76-5, to conduct legal gaming on a cruise vessel under paragraph (a) of this subsection;

(ii) The part of the structure in which licensed gaming activities are conducted is located entirely in an area which is located no more than eight hundred (800) feet from the mean high-water line (as defined in Section 29-15-1) of the waters within the State of Mississippi, which lie adjacent to the State of Mississippi south of the three (3) most southern counties in the State of Mississippi, including the Mississippi Sound, St. Louis Bay, Biloxi Bay and Pascagoula Bay, or, with regard to Harrison County only, no farther north than the southern boundary of the right-of-way for U.S. Highway 90, whichever is greater; and

(iii) In the case of a structure that is located in whole or part on shore, the part of the structure in which licensed gaming activities are conducted shall lie adjacent to state waters south of the three (3) most southern counties in the State of Mississippi, including the Mississippi Sound, St. Louis Bay, Biloxi Bay and Pascagoula Bay. When the site upon which the structure is located consists of a parcel of real property, easements and rights-of-way for public streets and highways shall not be construed to interrupt the contiguous nature of the parcel, nor shall the footage contained within the easements and rights-of-way be counted in the calculation of the distances specified in subparagraph (ii).

(c) A vessel as defined in Section 27-109-1 whenever such vessel is on the Mississippi River or navigable waters within any county bordering on the Mississippi River, and in which the registered voters of the county in which the port is located have not voted to prohibit such betting, gaming or wagering on vessels as provided in Section 19-3-79; or

(d) That is legal under the laws of the State of Mississippi.

(2) Nothing in this section shall apply to any gambling device, machine or equipment that is owned, possessed, controlled, installed, procured, repaired or transported in accordance with subsection (4) of Section 97-33-7.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 3(9); 1857, ch. 64, art. 139; 1871, § 2603; 1880, § 2849; 1892, § 1127; 1906, § 1209; Hemingway's 1917, § 939; 1930, § 966; 1942, § 2196; Laws, 1989, ch. 481, § 3; Laws, 1990, ch. 449, § 6; Laws, 1990, ch. 573, § 12; Laws, 1990 Ex Sess, ch. 45, § 150; Laws, 2005, 5th Ex Sess, ch. 16, § 5, eff from and after passage (approved Oct. 17, 2005).

Cross References — Elected or appointed official not to derive any pecuniary benefit as result of duties under this section, and penalties therefor, see § 25-4-119.

Mississippi Gaming Control Act, see §§ 75-76-1 et seq.

Recovery of money lost in void gambling contracts, see §§ 87-1-1 et seq.

Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see § 97-43-1 et seq.

JUDICIAL DECISIONS

1. In general.

Business owner did not meet his burden of showing that he was being deprived of his property without due process of law because the criminal statutes, Miss. Code Ann. § 97-33-7 and Miss. Code Ann. § 97-33-17, were not too broad in their description of what caused a video game to be an illegal slot machine, and a person with ordinary intelligence would have little difficulty determining what exactly was prohibited; Mississippi did not extend a property right to illegal gambling machines, such that there were no due process rights violations, and Miss. Code Ann. § 97-33-7(2) was not unconstitutionally vague. Trainer v. State, 930 So. 2d 373, 2006 Miss. LEXIS 178 (Miss. 2006).

In a prosecution for burglary, which involved the stealing of a slot machine containing a large number of nickels, it was immaterial whether or not the slot machine was "property," since the money in the machine was property, and was not withdrawn from that category by a statute under which the money could have been seized by any police officer. Hawkins v. State, 193 Miss. 586, 10 So. 2d 678, 1942 Miss. LEXIS 154 (Miss. 1942).

A city marshal had no authority, without affidavit or search warrant, to seize slot machine which was not operated by person keeping it, since statute does not contemplate that officers may seize property not contraband without a warrant, unless such property is being used by persons in such manner as to make out a crime. King v. McCrory, 179 Miss. 162, 175 So. 193, 1937 Miss. LEXIS 31 (Miss. 1937).

An owner of a slot machine which was kept on premises of another not for purpose of operating it could replevy such machine from city marshal who, while searching premises for intoxicating liquors, found machine and without taking any legal papers or making any affidavit took the machine into his possession, where marshal could not show that machine was being used for purpose of gaming. King v. McCrory, 179 Miss. 162, 175 So. 193, 1937 Miss. LEXIS 31 (Miss. 1937).

RESEARCH REFERENCES

ALR.

Forfeiture of property for unlawful use before trial of individual offender. 3 A.L.R.2d 738.

Forfeiture of money used in connection with gambling or lottery, or seized by officers in connection with an arrest or search on premises where such activities took place. 19 A.L.R.2d 1228.

Paraphernalia or appliances used for recording gambling transactions or receiving or furnishing gambling information as gaming "devices" within criminal statute or ordinance. 1 A.L.R.3d 726.

Constitutionality of statutes providing for destruction of gambling devices. 14 A.L.R.3d 366.

Validity, construction, and application of statutes or ordinances involved in prosecutions for possession of bookmaking paraphernalia. 51 A.L.R.4th 796.

Propriety of civil or criminal forfeiture of computer hardware or software. 39 A.L.R.5th 87.

Am. Jur.

38 Am. Jur. 2d, Gambling §§ 132 et seq.

12A Am. Jur. Pl & Pr Forms (Rev), Gambling, Forms 11 et seq. (actions to recover gambling losses).

CJS.

38 C.J.S., Gaming §§ 110-112, 116 et seq.

Law Reviews.

Payne, An introduction to civil forfeiture in Mississippi: An effective law enforcement tool or cash register justice? 59 Miss. L. J. 453, Fall 1989.

§ 97-33-19. Gambling; money and appliances forfeited; penalty for resisting seizure.

Any person or persons who shall oppose the seizure of any such moneys or appliances by any officer or person so authorized to make it, shall, on conviction thereof, be liable to a penalty of fifteen hundred dollars; and any person who shall take any part of said money, after the said seizure shall be declared, shall be guilty of a misdemeanor, and on conviction thereof, shall be fined and imprisoned, at the discretion of the court.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 3(10); 1857, ch. 64, art. 140; 1871, § 2604; 1880, § 2850; 1892, § 1128; 1906, § 1210; Hemingway's 1917, § 940; 1930, § 967; 1942, § 2197.

Cross References — Recovery of money lost in void gambling contracts, see §§ 87-1-1 et seq.

Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see § 97-43-1 et seq.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

This provision is capable of construction that respects First Amendment. Enlow v. Tishomingo County, 962 F.2d 501, 1992 U.S. App. LEXIS 12919 (5th Cir. Miss. 1992).

Genuine issues of material facts existed, precluding summary judgment, as to whether law enforcement officer was arresting owner of building where gambling raid occurred because officer feared riot when building owner questioned officers as to whether they had search warrant and arrest warrant, or whether officer was arresting him because owner had exercised First Amendment rights in connection with owner's protesting of raid. Enlow v. Tishomingo County, 962 F.2d 501, 1992 U.S. App. LEXIS 12919 (5th Cir. Miss. 1992).

RESEARCH REFERENCES

ALR.

Forfeiture of money used in connection with gambling or lottery or seized by officers in connection with an arrest or search on premises where such activities took place. 19 A.L.R.2d 1228.

Constitutionality of statutes providing for destruction of gambling devices. 14 A.L.R.3d 366.

Validity, construction, and application of statutes or ordinances involved in prosecutions for possession of bookmaking paraphernalia. 51 A.L.R.4th 796.

Am. Jur.

38 Am. Jur. 2d, Gambling §§ 129 et seq.

§ 97-33-21. Gambling; gambling with minor; applicability of section to games or lotteries authorized by Mississippi lottery law.

Any person of full age who shall bet any money or thing of any value with a minor, or allow a minor to bet at any game or gaming-table exhibited by him, or in which he is interested or in any manner concerned, on conviction thereof, shall be fined not less than Three Hundred Dollars ($300.00) and imprisoned not less than three (3) months.

This section shall apply to minors under the age of twenty-one (21) as it might apply to the operation of any game or lottery authorized by Chapter 115, Title 27.

HISTORY: Codes, 1857, ch. 64, art. 142; 1871, § 2606; 1880, § 2852; 1892, § 1129; 1906, § 1211; Hemingway's 1917, § 941; 1930, § 968; 1942, § 2198; Laws, 2018, 1st Ex Sess, ch. 2, § 56, eff from and after September 1, 2018.

Amendment Notes — The 2018 1st Extraordinary Session amendment, effective September 1, 2018, added the last paragraph.

Cross References — Statutory definition of the term "infant," see § 1-3-21.

Statutory definition of the term "minor," see § 1-3-27.

Recovery of money lost in void gambling contracts, see §§ 87-1-1 et seq.

Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see § 97-43-1 et seq.

§ 97-33-23. Gambling; gambling with minor knowing him to be under-age; applicability of section to games or lotteries authorized by Mississippi lottery law.

Any person of full age who shall bet any money or thing of value with a minor, knowing such minor to be under the age of twenty-one (21) years, or allowing any such minor to bet at any game or games, or at any gaming table exhibited by him, or in which he is interested or in any manner concerned, on conviction thereof, shall be punished by imprisonment in the Penitentiary not exceeding two (2) years.

This section shall apply to minors under the age of twenty-one (21) as it might apply to the operation of any game or lottery authorized by Chapter 115, Title 27.

HISTORY: Codes, 1857, ch. 64, art. 143; 1871, § 2607; 1880, § 2853; 1892, § 1130; 1906, § 1212; Hemingway's 1917, § 942; 1930, § 969; 1942, § 2199; Laws, 2018, 1st Ex Sess, ch. 2, § 57, eff from and after September 1, 2018.

Amendment Notes — The 2018 1st Extraordinary Session amendment, effective September 1, 2018, added the last paragraph.

Cross References — Statutory definition of the term "infant," see § 1-3-21.

Statutory definition of the term "minor," see § 1-3-27.

Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see § 97-43-1 et seq.

§ 97-33-25. Gambling; pool-selling; exceptions.

If any person shall sell or buy, either directly or indirectly, any chance in what is commonly called pool, upon any event whatever, or shall in any manner engage in such business or pastime, he shall be fined not more than Five Hundred Dollars ($500.00) or shall be imprisoned in the county jail not more than ninety (90) days; provided, however, this section shall not apply to betting, gaming or wagering:

(a) On a cruise vessel as defined in Section 27-109-1 whenever such vessel is in the waters within the State of Mississippi, which lie adjacent to the State of Mississippi south of the three (3) most southern counties in the State of Mississippi, including the Mississippi Sound, St. Louis Bay, Biloxi Bay and Pascagoula Bay, and in which the registered voters of the county in which the port is located have not voted to prohibit such betting, gaming or wagering on cruise vessels as provided in Section 19-3-79;

(b) In a structure located in whole or in part on shore in any of the three (3) most southern counties in the State of Mississippi in which the registered voters of the county have voted to allow such betting, gaming or wagering on cruise vessels as provided in Section 19-3-79, if:

(i) The structure is owned, leased or controlled by a person possessing a gaming license, as defined in Section 75-76-5, to conduct legal gaming on a cruise vessel under paragraph (a) of this section;

(ii) The part of the structure in which licensed gaming activities are conducted is located entirely in an area which is located no more than eight hundred (800) feet from the mean high-water line (as defined in Section 29-15-1) of the waters within the State of Mississippi, which lie adjacent to the State of Mississippi south of the three (3) most southern counties in the State of Mississippi, including the Mississippi Sound, St. Louis Bay, Biloxi Bay and Pascagoula Bay, or, with regard to Harrison County only, no farther north than the southern boundary of the right-of-way for U.S. Highway 90, whichever is greater; and

(iii) In the case of a structure that is located in whole or part on shore, the part of the structure in which licensed gaming activities are conducted shall lie adjacent to state waters south of the three (3) most southern counties in the State of Mississippi, including the Mississippi Sound, St. Louis Bay, Biloxi Bay and Pascagoula Bay. When the site upon which the structure is located consists of a parcel of real property, easements and rights-of-way for public streets and highways shall not be construed to interrupt the contiguous nature of the parcel, nor shall the footage contained within the easements and rights-of-way be counted in the calculation of the distances specified in subparagraph (ii).

(c) On a vessel as defined in Section 27-109-1 whenever such vessel is on the Mississippi River or navigable waters within any county bordering on the Mississippi River, and in which the registered voters of the county in which the port is located have not voted to prohibit such betting, gaming or wagering on vessels as provided in Section 19-3-79; or

(d) That is legal under the laws of the State of Mississippi.

HISTORY: Codes, 1892, § 1131; 1906, § 1213; Hemingway's 1917, § 943; 1930, § 970; 1942, § 2200; Laws, 1989, ch. 481, § 4; Laws, 1990, ch. 449, § 7; Laws, 1990, ch. 573, § 13; Laws, 1990 Ex Sess, ch. 45 § 151; Laws, 2005, 5th Ex Sess, ch. 16, § 6, eff from and after passage (approved Oct. 17, 2005).

Cross References — Elected or appointed official not to derive any pecuniary benefit as result of duties under this section, and penalties therefor, see § 25-4-119.

Mississippi Gaming Control Act, see §§ 75-76-1 et seq.

Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see § 97-43-1 et seq.

RESEARCH REFERENCES

ALR.

Construction and application of state or municipal enactments relating to policy or numbers games. 70 A.L.R.3d 897.

Validity, construction, and application of statute or ordinance prohibiting or regulating use of messenger services to place wagers in pari-mutuel pool. 78 A.L.R.4th 483.

Validity of statute or ordinance prohibiting or regulating bookmaking or pool selling. 80 A.L.R.4th 1079.

Construction and application of statute or ordinance prohibiting or regulating bookmaking or pool selling. 84 A.L.R.4th 740.

Am. Jur.

38 Am. Jur. 2d, Gambling §§ 30 et seq.

19 Am. Jur. Proof of Facts 647, Unlawful Gambling Games §§ 10, 11.

CJS.

38 C.J.S., Gaming §§ 10, 140-145.

§ 97-33-27. Gambling; betting on horse or yacht race or shooting match; exceptions.

If any person shall bet on a horse race or a yacht race or on a shooting match, he shall be fined not more than Five Hundred Dollars ($500.00), and, unless the fine and costs be immediately paid, he shall be imprisoned in the county jail not more than ninety (90) days; provided, however, this section shall not apply to betting, gaming or wagering:

(a) On a cruise vessel as defined in Section 27-109-1 whenever such vessel is in the waters within the State of Mississippi, which lie adjacent to the State of Mississippi south of the three (3) most southern counties in the State of Mississippi, including the Mississippi Sound, St. Louis Bay, Biloxi Bay and Pascagoula Bay, and in which the registered voters of the county in which the port is located have not voted to prohibit such betting, gaming or wagering on cruise vessels as provided in Section 19-3-79;

(b) In a structure located in whole or in part on shore in any of the three (3) most southern counties in the State of Mississippi in which the registered voters of the county have voted to allow such betting, gaming or wagering on cruise vessels as provided in Section 19-3-79, if:

(i) The structure is owned, leased or controlled by a person possessing a gaming license, as defined in Section 75-76-5, to conduct legal gaming on a cruise vessel under paragraph (a) of this section;

(ii) The part of the structure in which licensed gaming activities are conducted is located entirely in an area which is located no more than eight hundred (800) feet from the mean high-water line (as defined in Section 29-15-1) of the waters within the State of Mississippi, which lie adjacent to the State of Mississippi south of the three (3) most southern counties in the State of Mississippi, including the Mississippi Sound, St. Louis Bay, Biloxi Bay and Pascagoula Bay, or, with regard to Harrison County only, no farther north than the southern boundary of the right-of-way for U.S. Highway 90, whichever is greater; and

(iii) In the case of a structure that is located in whole or part on shore, the part of the structure in which licensed gaming activities are conducted shall lie adjacent to state waters south of the three (3) most southern counties in the State of Mississippi, including the Mississippi Sound, St. Louis Bay, Biloxi Bay and Pascagoula Bay. When the site upon which the structure is located consists of a parcel of real property, easements and rights-of-way for public streets and highways shall not be construed to interrupt the contiguous nature of the parcel, nor shall the footage contained within the easements and rights-of-way be counted in the calculation of the distances specified in subparagraph (ii).

(c) On a vessel as defined in Section 27-109-1 whenever such vessel is on the Mississippi River or navigable waters within any county bordering on the Mississippi River, and in which the registered voters of the county in which the port is located have not voted to prohibit such betting, gaming or wagering on vessels as provided in Section 19-3-79; or

(d) That is legal under the laws of the State of Mississippi.

HISTORY: Codes, 1892, § 1132; 1906, § 1214; Hemingway's 1917, § 944; 1930, § 971; 1942, § 2201; Laws, 1989, ch. 481, § 5; Laws, 1990, ch. 449, § 8; Laws, 1990, ch. 573, § 14; Laws, 1990 Ex Sess, ch. 45 § 152; Laws, 2005, 5th Ex Sess, ch. 16, § 7, eff from and after passage (approved Oct. 17, 2005).

Cross References — Licensing and regulation of cruise vessels, see § 27-109-1 et seq.

Mississippi Gaming Control Act, see §§ 75-76-1 et seq.

Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see § 97-43-1 et seq.

RESEARCH REFERENCES

ALR.

Validity, construction, and application of statutes or ordinances involved in prosecutions for transmission of wagers or wagering information related to bookmaking. 53 A.L.R.4th 801.

Validity, construction, and application of statute or ordinance prohibiting or regulating use of messenger services to place wagers in pari-mutuel pool. 78 A.L.R.4th 483.

Validity of statute or ordinance prohibiting or regulating bookmaking or pool selling. 80 A.L.R.4th 1079.

Construction and application of statute or ordinance prohibiting or regulating bookmaking or pool selling. 84 A.L.R.4th 740.

Am. Jur.

38 Am. Jur. 2d, Gambling §§ 39 et seq.

19 Am. Jur. Proof of Facts 647, Unlawful Gambling Games § 28 (proof of use of premises for bookmaking).

CJS.
38 C.J.S., Gaming §§ 138, 139, 147-149.

§ 97-33-29. Gambling; laws remedial, not penal.

All laws made or to be made for the suppression of gambling or gaming, are remedial and not penal statutes, and shall be so construed by the courts.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 11(7); 1857, ch. 64, art. 146; 1871, § 2610; 1880, § 2856; 1892, § 1133; 1906, § 1215; Hemingway's 1917, § 945; 1930, § 972; 1942, § 2202.

Cross References — Illegality of gambling contracts, generally, see §§ 87-1-1 et seq.

Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see § 97-43-1 et seq.

JUDICIAL DECISIONS

1. In general.

Word "remedial" called for gaming laws to be construed liberally against the criminal; the Mississippi Supreme Court has never held that the provision removed all prohibitory gambling laws from the criminal code; the constitutional analysis of a statute is the same whether the statute under scrutiny is criminal or civil, and the Constitution applies to every statute. The proper construction of the statute, or whether it shall be strictly or liberally construed, is not the question, but whether the Constitution applies to all statutes alike, whether civil or criminal. And the supreme court holds that it does. Trainer v. State, 930 So. 2d 373, 2006 Miss. LEXIS 178 (Miss. 2006).

Indorsement and transfer of check in payment of gambling debt is void and ineffective to pass title to any subsequent holder. Skinner Mfg. Co. v. Deposit Guaranty Bank, 160 Miss. 815, 133 So. 660, 1931 Miss. LEXIS 166 (Miss. 1931).

Bank paying check indorsed in payment of gambling debt, resulting in loss to bank when maker stopped payment, held without remedy against maker. Skinner Mfg. Co. v. Deposit Guaranty Bank, 160 Miss. 815, 133 So. 660, 1931 Miss. LEXIS 166 (Miss. 1931).

RESEARCH REFERENCES

Am. Jur.
38 Am. Jur. 2d, Gambling §§ 150 et seq.

CJS.
38 C.J.S., Gaming §§ 18, 19.

§ 97-33-31. Lotteries; penalty for putting on; applicability of section to games or lotteries authorized by Mississippi lottery law.

If any person, in order to raise money for himself or another, or for any purpose whatever, shall publicly or privately put up a lottery to be drawn or adventured for, he shall, on conviction, be imprisoned in the Penitentiary not exceeding five (5) years.

This section shall not apply to the operation of any game or lottery authorized by Chapter 115, Title 27.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 3(23); 1857, ch. 64, art. 141;

1871, § 2605; 1880, § 2851; 1892, § 1199; 1906, § 1277; Hemingway's 1917, § 1009; 1930, § 1038; 1942, § 2270; Laws, 2018, 1st Ex Sess, ch. 2, § 58, eff from and after September 1, 2018.

Amendment Notes — The 2018 1st Extraordinary Session amendment, effective September 1, 2018, added the last paragraph.

Cross References — Provision in constitution prohibiting lotteries, see former Miss Const § 98.

Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see § 97-43-1 et seq.

Requisites of indictment for crimes involving lotteries, see § 99-7-35.

Sufficiency of lottery indictment, see § 99-17-29.

Compelling purchaser of lottery ticket to testify, see § 99-17-29.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Indictment.
3. Proof.

1. In general.

Cash drawing sponsored by political candidate does not constitute violation of bribery statutes, candidate gift statute, or lottery statute where scheme sponsored by candidate requires only that voters who wish to participate in cash drawing participate in election and where scheme expressly disclaims attempt to influence direction of vote. Naron v. Prestage, 469 So. 2d 83, 1985 Miss. LEXIS 2066 (Miss. 1985).

The offense under this section [Code 1942, § 2270] is made a felony, whereas under each of the subsequent nine sections pertaining to lotteries (Code 1942, §§ 2271-2279), the offense merely constitutes a misdemeanor. Clark v. State, 198 Miss. 88, 21 So. 2d 296, 1945 Miss. LEXIS 171 (Miss. 1945).

The words, "put up a lottery," as used in this section [Code 1942, § 2270] are to be construed in their usual and most common sense, as they would ordinarily be understood by the public in general. Clark v. State, 198 Miss. 88, 21 So. 2d 296, 1945 Miss. LEXIS 171 (Miss. 1945).

To "put up a lottery" within the meaning of this section [Code 1942, § 2270] is not to operate a lottery but to put up or provide whatever is necessary for its operation, that is, (1) the capital, (2) the necessary paraphernalia and (3) the plan or set-up for the operation. Clark v. State, 198 Miss. 88, 21 So. 2d 296, 1945 Miss. LEXIS 171 (Miss. 1945).

Policy game whereby "writers" issue tickets upon which purchaser selects a number from 1 to 78, and, to determine the winners, balls numbering from 1 to 78 are put in a bag and shaken and 12 withdrawn therefrom, the numbers upon which designating the winners who are paid in money, constitutes a lottery. Clark v. State, 198 Miss. 88, 21 So. 2d 296, 1945 Miss. LEXIS 171 (Miss. 1945).

Scheme whereby merchant gave customers tickets purchased from chamber of commerce entitling customers to chance on prize, held not "lottery" or "gambling device." R. J. Williams Furniture Co. v. McComb Chamber of Commerce, 147 Miss. 649, 112 So. 579, 1927 Miss. LEXIS 288 (Miss. 1927).

2. Indictment.

Charge in indictment that defendant wilfully, unlawfully and feloniously, in order to raise money for himself, publicly put up, owned, maintained and operated a lottery to be drawn or adventured for, commonly called policy or a gambling game for money, is not confined to that of having put up a lottery in violation of this section [Code 1942, § 2270], but also includes further offenses under subsequent sections of this chapter pertaining to lotteries (Code 1942, §§ 2271-2279). Clark v. State, 198 Miss. 88, 21 So. 2d 296, 1945 Miss. LEXIS 171 (Miss. 1945).

3. Proof.

State has burden of proof that defendant "put up a lottery" within the meaning of this section [Code 1942, § 2270], and mere proof that defendant was operating the lottery does not cast upon him the burden of showing that he did not put up the lottery. Clark v. State, 198 Miss. 88, 21 So. 2d 296, 1945 Miss. LEXIS 171 (Miss. 1945).

Where indictment charged defendant not only with a felony of having put up a lottery in violation of this section [Code 1942, § 2270] but other offenses which under subsequent sections of this chapter (Code 1942, §§ 2271-2279) are misdemeanors, and, although there was no proof that defendant put up the lottery within the purview of this section [Code 1942, § 2270], the proof showed that he did receive money for the lottery and delivered prizes therefor within the prohibition of Code 1942, § 2278, general verdict of guilty will be sustained, but case will be remanded for proper resentencing under Code 1942, § 2278. Clark v. State, 198 Miss. 88, 21 So. 2d 296, 1945 Miss. LEXIS 171 (Miss. 1945).

OPINIONS OF THE ATTORNEY GENERAL

It is illegal for a person to raffle off a jeep on which he owes, even if any proceeds over the amount he owes would be donated to a D.A.R.E. program. See Sections 97-33-31, 97-33-49, and 97-33-51. Stuart, April 27, 1995, A.G. Op. #95-0202.

RESEARCH REFERENCES

ALR.

Entrapment to commit offense with respect to gambling or lotteries. 31 A.L.R.2d 1212.

Validity and construction of statute exempting gambling operations carried on by religious, charitable, or other nonprofit organizations from general prohibitions against gambling. 42 A.L.R.3d 663.

State lotteries: actions by ticket holders against state or contractor for state. 40 A.L.R.4th 662.

Private contests and lotteries: entrants' rights and remedies. 64 A.L.R.4th 1021.

Am. Jur.

38 Am. Jur. 2d, Gambling §§ 5 et seq., 42 et seq.

19 Am. Jur. Proof of Facts 647, Unlawful Gambling Games § 10.

CJS.

54 C.J.S., Lotteries § 2.

§ 97-33-33. Lotteries; advertising prohibited; applicability of section to games or lotteries authorized by Mississippi lottery law.

If any person shall in any way advertise any lottery whatever, no matter where located, or shall knowingly have in his possession any posters or other lottery advertisements of any kind, save a regularly issued newspaper containing such an advertisement without intent to circulate the same as an advertisement, he shall, on conviction, be fined not less than Twenty-five Dollars ($25.00) nor more than One Hundred Dollars ($100.00), or be imprisoned in the county jail not exceeding three (3) months, or both.

This section shall not apply to the operation of any game or lottery authorized by Chapter 115, Title 27.

HISTORY: Codes, 1892, § 1202; 1906, § 1280; Hemingway's 1917, § 1012; 1930, § 1041; 1942, § 2273; Laws, 2018, 1st Ex Sess, ch. 2, § 59, eff from and after September 1, 2018.

Amendment Notes — The 2018 1st Extraordinary Session amendment, effective September 1, 2018, bin the first paragraph, inserted "($25.00)," "($100.00)" and "(3)"; added the last paragraph; and made minor stylistic changes.

Cross References — Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see § 97-43-1 et seq.

RESEARCH REFERENCES

Am. Jur.
38 Am. Jur. 2d, Gambling § 147.

CJS.
54 C.J.S., Lotteries § 29.

§ 97-33-35. Lotteries; advertising prohibited; publication or circulation of newspapers; applicability of section to games or lotteries authorized by Mississippi lottery law.

If any newspaper published or circulated in this state shall contain an advertisement of any lottery whatever, or any matter intended to advertise a lottery, no matter where located, the editor or editors, publisher or publishers, and the owner or owners thereof permitting the same, shall be guilty of a misdemeanor and, on conviction, shall be fined not less than One Hundred Dollars ($100.00) nor more than One Thousand Dollars ($1,000.00), and be imprisoned in the county jail not less than ten (10) days nor more than three (3) months, for each offense. The issuance of each separate daily or weekly edition of the newspaper that shall contain such an advertisement shall be considered a separate offense.

This section shall not apply to the operation of any game or lottery authorized by Chapter 115, Title 27.

HISTORY: Codes, 1892, § 1203; 1906, § 1281; Hemingway's 1917, § 1013; 1930, § 1042; 1942, § 2274; Laws, 2018, 1st Ex Sess, ch. 2, § 60, eff from and after September 1, 2018.

Amendment Notes — The 2018 1st Extraordinary Session amendment, effective September 1, 2018, added the last paragraph.

Cross References — Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see § 97-43-1 et seq.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am. Jur.
38 Am. Jur. 2d, Gambling § 147.

CJS.
54 C.J.S., Lotteries §§ 8, 9.

§ 97-33-37. Lotteries; advertising prohibited; sale of newspapers; applicability of section to games or lotteries authorized by Mississippi lottery law.

If any newsdealer or other person shall, directly or indirectly, sell or offer for sale any newspaper or other publication containing a lottery advertisement, he shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than Ten Dollars ($10.00) or imprisoned not less than ten (10) days, or both.

This section shall not apply to the operation of any game or lottery authorized by Chapter 115, Title 27.

HISTORY: Codes, 1892, § 1204; 1906, § 1282; Hemingway's 1917, § 1014; 1930, § 1043; 1942, § 2275; Laws, 2018, 1st Ex Sess, ch. 2, § 61, eff from and after September 1, 2018.

Amendment Notes — The 2018 1st Extraordinary Session amendment, effective September 1, 2018, in the first paragraph, inserted "($10.00)" and "(10)"; added the last paragraph; and made minor punctuation changes.

Cross References — Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see § 97-43-1 et seq.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am. Jur.
38 Am. Jur. 2d, Gambling § 48.

CJS.
54 C.J.S., Lotteries § 29.

§ 97-33-39. Lotteries; sale of tickets; applicability of section to games or lotteries authorized by Mississippi lottery law.

If any person shall sell, or offer or expose for sale, any lottery ticket, whether the lottery be in or out of this state, or for or in any other state, territory, district, or country, he shall, on conviction, be fined not less than Twenty-five Dollars ($25.00) nor more than One Hundred Dollars ($100.00), or imprisoned in the county jail not less than ten (10) days nor more than sixty (60) days, or both.

This section shall not apply to the operation of any game or lottery authorized by Chapter 115, Title 27.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 3(23); 1857, ch. 64, art. 141; 1871, § 2605; 1880, § 2851; 1892, § 1200; 1906, § 1278; Hemingway's 1917, § 1010; 1930, § 1039; 1942, § 2271; Laws, 2018, 1st Ex Sess, ch. 2, § 62, eff from and after September 1, 2018.

Amendment Notes — The 2018 1st Extraordinary Session amendment, effective September 1, 2018, added the last paragraph.

Cross References — Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see § 97-43-1 et seq.

RESEARCH REFERENCES

Am. Jur.
38 Am. Jur. 2d, Gambling § 43.
19 Am. Jur. Proof of Facts 647, Unlawful Gambling Games § 10.

CJS.
54 C.J.S., Lotteries § 28.

§ 97-33-41. Lotteries; buying tickets in state prohibited; applicability of section to games or lotteries authorized by Mississippi lottery law.

If any person shall buy in this state any lottery ticket, whether the lottery be in or out of this state, or of or in any other state, territory, district, or country, he shall, on conviction, be fined not less than Five Dollars ($5.00) nor more than Twenty-five Dollars ($25.00), or be imprisoned in the county jail not exceeding ten (10) days, or both.

This section shall not apply to the operation of any game or lottery authorized by Chapter 115, Title 27.

HISTORY: Codes, 1892, § 1201; 1906, § 1279; Hemingway's 1917, § 1011; 1930, § 1040; 1942, § 2272; Laws, 1992, ch. 388, § 1, eff from and after passage (approved April 27, 1992); Laws, 2018, 1st Ex Sess, ch. 2, § 63, eff from and after September 1, 2018.

Amendment Notes — The 2018 1st Extraordinary Session amendment, effective September 1, 2018, added the last paragraph.

Cross References — Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see § 97-43-1 et seq.

Compelling purchaser of lottery ticket to testify, see § 99-17-29.

RESEARCH REFERENCES

Am. Jur.
38 Am. Jur. 2d, Gambling § 43.

CJS.
54 C.J.S., Lotteries § 26, 27.

§ 97-33-43. Lotteries; railroads; applicability of section to games or lotteries authorized by Mississippi lottery law.

If any railroad company shall suffer or permit the sale of a lottery ticket of any kind on its cars, or at its depots or depot grounds, or by its employees, no matter where the lottery is located, it shall be guilty of a misdemeanor and, on conviction, shall be fined not less than Twenty Dollars ($20.00) nor more than One Hundred Dollars ($100.00) for every such ticket so sold.

This section shall not apply to the operation of any game or lottery authorized by Chapter 115, Title 27.

HISTORY: Codes, 1892, § 1205; 1906, § 2183; Hemingway's 1917, § 1015; 1930, § 1044; 1942, § 2276; Laws, 2018, 1st Ex Sess, ch. 2, § 64, eff from and after September 1, 2018.

Amendment Notes — The 2018 1st Extraordinary Session amendment, effective September 1, 2018, in the first paragraph, inserted "($20.00)" and "($100.00)"; added the last paragraph; and made minor punctuation changes.

Cross References — Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see § 97-43-1 et seq.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am. Jur.	**CJS.**
38 Am. Jur. 2d, Gambling § 140.	54 C.J.S., Lotteries § 29.

§ 97-33-45. Lotteries; steamboats; applicability of section to games or lotteries authorized by Mississippi lottery law.

If the owner or owners of any steamboat shall suffer or permit the sale of a lottery ticket of any kind on his or their boat, or by his or their employees, no matter where the lottery is located, he or they shall be guilty of a misdemeanor and shall, on conviction, be punished as prescribed in Section 97-33-43.

This section shall not apply to the operation of any game or lottery authorized by Chapter 115, Title 27.

HISTORY: Codes, 1892, § 1206; 1906, § 1284; Hemingway's 1917, § 1016; 1930, § 1045; 1942, § 2277; Laws, 2018, 1st Ex Sess, ch. 2, § 65, eff from and after September 1, 2018.

Amendment Notes — The 2018 1st Extraordinary Session amendment, effective September 1, 2018, added the last paragraph.

Cross References — Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see § 97-43-1 et seq.

RESEARCH REFERENCES

Am. Jur.	**CJS.**
38 Am. Jur. 2d, Gambling § 140.	54 C.J.S., Lotteries § 29.

§ 97-33-47. Lotteries; acting as agent for; applicability of section to games or lotteries authorized by Mississippi lottery law.

If any person shall act as agent for any lottery or lottery company, no matter where domiciled or located, or if he shall assume to so act as agent, or if he receive any money or other thing for any such lottery or lottery company, or deliver to any person any ticket or tickets, prize or prizes, or other thing from such lottery or lottery company, he shall, on conviction, be fined not less than One Hundred Dollars ($100.00), nor more than Five Hundred Dollars ($500.00), and be imprisoned in the county jail not less than three (3) months nor more than six (6) months.

This section shall not apply to the operation of any game or lottery authorized by Chapter 115, Title 27.

HISTORY: Codes, 1892, § 1207; 1906, § 1285; Hemingway's 1917, § 1017; 1930,

§ 1046; 1942, § 2278; Laws, 2018, 1st Ex Sess, ch. 2, § 66, eff from and after September 1, 2018.

Amendment Notes — The 2018 1st Extraordinary Session amendment, effective August 29, 2018, added the last paragraph.

Cross References — Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see § 97-43-1 et seq.

JUDICIAL DECISIONS

1. In general.

Where indictment charged defendant not only with a felony of having put up a lottery in violation of Code 1942, § 2270, but other offenses which under subsequent sections of this chapter (Code 1942, §§ 2271-2279) are misdemeanors, and, although there was no proof that defendant put up the lottery within the purview of Code 1942, § 2270, the proof showed that he did receive money for the lottery and delivered prizes therefor within the prohibition of this section [Code 1942, § 2278], general verdict of guilty will be sustained, but case will be remanded for proper resentencing hereunder. Clark v. State, 198 Miss. 88, 21 So. 2d 296, 1945 Miss. LEXIS 171 (Miss. 1945).

RESEARCH REFERENCES

Am. Jur.

38 Am. Jur. 2d, Gambling § 48.

CJS.

54 C.J.S., Lotteries § 29.

§ 97-33-49. Raffles; applicability of section to games or lotteries authorized by Mississippi lottery law.

Except as otherwise provided in Section 97-33-51, if any person, in order to raise money for himself or another, shall publicly or privately put up or in any way offer any prize or thing to be raffled or played for, he shall, on conviction, be fined not more than Twenty Dollars ($20.00), or be imprisoned not more than one (1) month in the county jail.

This section shall not apply to the operation of any game or lottery authorized by Chapter 115, Title 27.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 3(23); 1857, ch. 64, art. 141; 1871, § 2605; 1880, § 2851; 1892, § 1208; 1906, § 1286; Hemingway's 1917, § 1018; 1930, § 1047; 1942, § 2279; Laws, 1992, ch. 581, § 26, eff from and after October 1, 1992; Laws, 2018, 1st Ex Sess, ch. 2, § 67, eff from and after September 1, 2018.

Amendment Notes — The 2018 1st Extraordinary Session amendment, effective September 1, 2018, added the last paragraph.

Cross References — Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see § 97-43-1 et seq.

JUDICIAL DECISIONS

1. In general.

This section [Code 1942, § 2279] deals with cases wherein the putting up a lottery is for a single occasion. Clark v. State, 198 Miss. 88, 21 So. 2d 296, 1945 Miss. LEXIS 171 (Miss. 1945).

Property raffled must be put up or offered within the state. Jenkins v. State, 96

Miss. 461, 50 So. 495, 1910 Miss. LEXIS 145 (Miss. 1910).

The statute does not make punishable the selling of a chance in a raffle. The unlawful act is the putting up of the property. Kirk v. State, 69 Miss. 215, 10 So. 577, 1891 Miss. LEXIS 79 (Miss. 1891).

OPINIONS OF THE ATTORNEY GENERAL

It is illegal for a person to raffle off a jeep on which he owes money, even if any proceeds over the amount owed would be donated to a D.A.R.E. program. See Sections 97-33-31, 97-33-51, and this section. Stuart, April 27, 1995, A.G. Op. #95-0202.

In order to be legal, a raffle must be sponsored by a nonprofit civic, educational, wildlife conservation or religious organization and all proceeds must go to that organization, to be dispersed in accordance with the organization's rules and regulations. Dedeaux, July 25, 1997, A.G. Op. #97-0443.

RESEARCH REFERENCES

ALR.

Entrapment to commit offense with respect to gambling or lotteries. 31 A.L.R.2d 1212.

State lotteries: actions by ticket holders against state or contractor for state. 40 A.L.R.4th 662.

Am. Jur.

38 Am. Jur. 2d, Gambling §§ 5 et seq.

19 Am. Jur. Proof of Facts 647, Unlawful Gambling Games § 10.

CHARITABLE BINGO LAW

Sec.

97-33-50. Short title.
97-33-51. Exemptions for certain bingo games and raffles; funding of expenses of Charitable Bingo Law; deposit of user charges and fees authorized under this section into State General Fund.
97-33-52. Organizations authorized to conduct bingo games; disposition of proceeds; records and reports.
97-33-53. Definitions.
97-33-55. License to conduct games; application; person or persons responsible; fee.
97-33-57. Investigation of qualifications of applicants for licenses; criteria; term of license; denial, refusal, suspension or revocation of license.
97-33-59. Special licenses for emergency financial relief; special charitable limited license requirement.
97-33-61. Notice and hearing prerequisites to denial of license; judicial review.
97-33-63. [Reserved].
97-33-65. Commission to control games; entry and inspection by agents; suspension or revocation of license for violations.
97-33-67. Length and frequency of sessions; prize limits; designated supervisor responsible for session; purchase of supplies only from licensees; persons under 18 years of age.
97-33-69. Active member to conduct games; compensation, rentals and fees regulated; contract to be in writing; furnisher of services or equipment not to conduct games; allowable expenses.
97-33-71. Records and reports to Commission.
97-33-73. Gaming and Tax Commissions may examine books and records.
97-33-75. Violations; sanctions.

Sec.
97-33-77. Regulation of pull-tabs.
97-33-79. Regulation of manufacturers of supplies and equipment; license required; sale of supplies only to licensees; gifts, etc.; records and reports.
97-33-81. Overlap of financial interest between organizations conducting games and manufacturers, distributors, or lessors.
97-33-81. Overlap of financial interest between organizations conducting games and manufacturers, distributors, or lessors.
97-33-83 through 97-33-99. [Reserved].
97-33-103. Annual report by Commission.
97-33-105. Commission personnel not to have interest in organization conducting bingo or manufacturing or distributing supplies or equipment.
97-33-107. Functions, duties, and responsibilities of Commission.
97-33-109. Monitoring of licensees; enforcement powers and actions; prosecutions; penalties.
97-33-111 through 97-33-199. [Reserved].
97-33-201. Licensure as manufacturer, distributor, or operator of supplies or equipment or as commercial lessor; application; fee; requirements; denial, refusal to renew, suspension or revocation; grounds.
97-33-203. Commercial lessor's license; rental rates and other charges allowable; length and frequency of rentals; agreements with distributors.

§ 97-33-50. Short title.

The provisions of Sections 97-33-51 through 97-33-81, 97-33-101 through 97-33-109, 97-33-201 and 97-33-203, Mississippi Code of 1972, may be cited as the "Charitable Bingo Law."

HISTORY: Laws, 1992, ch. 581, § 1, eff from and after October 1, 1992.

OPINIONS OF THE ATTORNEY GENERAL

Bingo regulation has been delegated by Mississippi legislature to Mississippi Gaming Commission by Charitable Bingo Law, Miss. Code Sections 97-33-50 et seq.; however, this law has not preempted local governing authority power to regulate hours of bingo operation or power to enact reasonable zoning restrictions relating to bingo operations and facilities. Scott, Jan. 20, 1993, A.G. Op. #93-0014.

RESEARCH REFERENCES

ALR.

Validity and construction of statute exempting gambling operations carried on by religious, charitable, or other nonprofit organizations from general prohibitions against gambling. 42 A.L.R.3d 663.

Am. Jur.

38 Am. Jur. 2d, Gambling §§ 21, 37.

CJS.

38 C.J.S., Gaming §§ 10, 140-145, 163-165.

66 C.J.S., Nuisance §§ 81, 82.

§ 97-33-51. Exemptions for certain bingo games and raffles; funding of expenses of Charitable Bingo Law; deposit of user charges and fees authorized under this section into State General Fund.

(1) The provisions of Sections 97-33-1 through 97-33-49 shall not apply to any raffle wherein a ticket is sold and a prize is offered when such raffle is being held by and for the benefit of any nonprofit civic, educational, wildlife conservation or religious organization with all proceeds going to said organization.

(2) The provisions of Sections 97-33-1 through 97-33-49 shall not apply to any bingo game wherein a prize is offered when such bingo game is being held in accordance with the provisions of the Charitable Bingo Law.

(3) A bingo game or a raffle held pursuant to the provisions of the Charitable Bingo Law shall not be considered a game or gambling game for the purposes of Section 75-76-1 et seq.

(4) From and after July 1, 2016, the expenses of the Charitable Bingo Law shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law and as determined by the State Fiscal Officer.

(5) From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

HISTORY: Laws, 1979, ch. 390; Laws, 1987, ch. 445; Laws, 1991, ch. 588, § 2; Laws, 1992, ch. 581, § 2; Laws, 2017, 1st Ex Sess, ch. 7, § 42, eff from and after passage (approved June 23, 2017).

Editor's Notes — Sections 97-33-51 through 97-33-81, 97-33-101 through 97-33-109, 97-33-201 and 97-33-203 may be cited as the "Charitable Bingo Law" by provision of § 97-33-50.

Cross References — Posts of the American Legion and posts of the Veterans of Foreign Wars of the United States may utilize nonmembers to assist designated supervisors in the conduct of bingo under the Charitable Bingo Law and qualify for exemption from regulation of charitable solicitations, see § 79-11-505.

Provisions of this section constituting exception from prohibition of raffles, see § 97-33-49.

Except as otherwise provided in this section through § 97-33-81, all net proceeds from bingo to be expended for purposes for which organization conducting bingo game is created, see § 97-33-52.

JUDICIAL DECISIONS

1. In general.

Section 87-1-1, which declares "utterly void" all contracts executed and made in connection with illegal gaming activities, does not bar collection of debts arising out of legal gaming activities; thus, § 87-1-1 does not apply to bingo, since charitable bingo games were exempted from any and all "illegal" definitions by § 97-33-51. Frank v. Dore, 635 So. 2d 1369, 1994 Miss. LEXIS 138 (Miss. 1994).

Bingo is not a "lottery" prohibited by

[former] Mississippi Constitution Art 4, § 98, and therefore this section is constitutional. Knight v. State, 574 So. 2d 662, 1990 Miss. LEXIS 848 (Miss. 1990).

OPINIONS OF THE ATTORNEY GENERAL

Governmental entity, without express authority, cannot claim exemption provided to certain entities under subsection (1) of this section, and may not conduct raffles to raise money. Cockrell Nov. 3, 1993, A.G. Op. #93-0746.

It is illegal for a person to raffle off a jeep on which he owes money, even if any proceeds over the amount owed would be donated to a D.A.R.E. program. See Sections 97-33-31, 97-33-49, and this section. Stuart, April 27, 1995, A.G. Op. #95-0202.

In order to be legal, a raffle must be sponsored by a nonprofit civic, educational, wildlife conservation or religious organization and all proceeds must go to that organization, to be dispersed in accordance with the organization's rules and regulations. Dedeaux, July 25, 1997, A.G. Op. #97-0443.

Any arrest made by a Mississippi Gaming Commission agent for assault, larceny, etc., is as a private citizen as it was the intent of the legislature to only give gaming enforcement agents the authority to enforce violations of the Gaming Control Act and the Charitable Bingo Law. Patton, Jan. 14, 2000, A.G. Op. #99-0708.

A governmental entity, without express statutory authority, may not claim the exemption provided to certain entities under Section 97-33-51(1) and may not conduct raffles to raise money. Hilliard, Feb. 14, 2003, A.G. Op. #03-0041.

RESEARCH REFERENCES

ALR.

Validity and construction of statute exempting gambling operations carried on by religious, charitable or other nonprofit organizations from general prohibitions against gambling. 42 A.L.R.3d 663.

Am. Jur.

38 Am. Jur. 2d, Gambling §§ 10 et seq.

CJS.

54 C.J.S., Lotteries §§ 8, 9.

§ 97-33-52. Organizations authorized to conduct bingo games; disposition of proceeds; records and reports.

(1) A bingo game may be conducted only:

(a) When held for the benefit of a charitable organization that (i) is licensed pursuant to Section 97-33-55 or Section 97-33-59; (ii) is domiciled in the State of Mississippi; and

(b) When the game is held by active members of such organization.

(2) Except as may be otherwise provided in Sections 97-33-51 through 97-33-203, all net proceeds derived from a bingo game authorized by this section shall be expended only for the purposes for which the organization is created, and no net proceeds derived from a bingo game authorized by this section shall be distributed to a charity outside of the State of Mississippi without the approval of the Mississippi Gaming Commission. Nothing in the Charitable Bingo Law shall prohibit a charitable organization from using gross receipts derived from a bingo game conducted under the Charitable Bingo Law to pay administrative penalties imposed by any state agency against the charitable organization.

(3) None of the proceeds of a bingo game authorized to be held under this

section shall be used to purchase, construct or improve a building, hall or other facility solely for the purpose of conducting or operating a bingo game.

(4) Every organization which conducts bingo games shall report to the Mississippi Gaming Commission at such time, in such manner and on such forms as the commission prescribes. All records and reports so filed shall be public records and shall be available for inspection in accordance with the Mississippi Public Records Act of 1983.

HISTORY: Laws, 1991, ch. 588, § 1; Laws, 1992, ch. 581, § 3; Laws, 1994, ch. 635, § 1; Laws, 2002, ch. 366, § 1, eff from and after passage (approved Mar. 18, 2002).

Editor's Notes — Sections 97-33-51 through 97-33-81, 97-33-101 through 97-33-109, 97-33-201 and 97-33-203 may be cited as the "Charitable Bingo Law" by provision of § 97-33-50.

Cross References — Mississippi Public Records Act of 1983, see §§ 25-61-1 et seq.

Exemption of certain bingo games and raffles from provisions of this section, see § 97-33-51.

Federal Aspects— Section 501 of the Internal Revenue Code is codified at 26 USCS § 501.

§ 97-33-53. Definitions.

As used in Sections 97-33-51 through 97-33-203, the following words and phrases shall have the meanings ascribed herein unless the context clearly indicates otherwise:

(a) "Bingo" means a game of chance in which a right to participate is sold to a player and prizes are awarded, that is:

(i) Played with a card, sheet, or an electronic representation thereof, bearing numbers or symbols;

(ii) Played with the participant covering, marking or revealing the numbers or symbols, as objects similarly numbered or designated are drawn from a receptacle and orally called; in the case of electronic representations, the requisite covering, marking or revealing may be accomplished electronically to match objects similarly numbered or designated and stored in memory in advance as winners, or which are generated randomly by an electronic process;

(iii) Won by the player who first covers, marks or reveals a previously designated arrangement of numbers or symbols; and

(iv) Played on the premises of a licensed organization and during the organization's regular hours of conducting bingo games.

The term "bingo" includes pull-tabs made available as a companion game to bingo and played on the premises. The term "bingo" does not include any game which is played via television, telephone, satellite dish or any other telecommunications transmission or receiving device.

Any electronic device used to produce an electronic representation must maintain an inventory recorded in computed memory, not on cartridge memory, of the number of winners and losers. It must also be equipped with tamper-proof electric meters as a backup to the computer memory. It may not dispense cash or coins. Paybacks will be dispensed by printed ticket only. The printer shall maintain duplicate records of all transactions. All such electronic devices shall be approved by the Mississippi Gaming Commission.

(b) "Charitable organization" means:

(i) Any nonprofit organization domiciled in this state that is tax exempt under Section 501(c) or (d) of the United States Internal Revenue Code and which has on file with the Mississippi Gaming Commission either a tax exemption letter issued by the United States Internal Revenue Service, or a certified copy of its application for such tax exempt status if the commission determines that the organization is likely to be granted the tax exempt status, and is:

1. Any chapter or post domiciled in this state of a nationally chartered organization whose membership is composed of former members of the military forces of the United States of America or whose membership is composed of members of the Merchant Marine Veterans Association; or

2. Any nonprofit civic, educational, wildlife conservation organization or religious organization domiciled in this state.

If an organization which has on file with the commission a certified copy of its application for a tax exemption under Section 501(c) or (d) of the U.S. Internal Revenue Code is not granted the exemption within twelve (12) months from the date of such application, the organization's license shall be subject to revocation pursuant to Section 97-33-61.

(ii) Any senior citizen recreation club, which is defined as an organization sanctioned by the local council on aging and composed of members aged sixty (60) years or older, the sole function of which is to provide amusement and diversion for its members.

(c) "Commission" means the Mississippi Gaming Commission.

(d) "Distributor" means any person or other entity who sells, offers for sale or otherwise furnishes to any person, gaming supplies or equipment for use in the conducting of a bingo game authorized by Sections 97-33-51 through 97-33-203.

(e) "Manufacturer" means any person or other entity who manufactures for sale, offers for sale, or otherwise furnishes, any gaming supplies or equipment for use in the conducting of a bingo game authorized by Sections 97-33-51 through 97-33-203.

(f) "Commercial lessor" means any person or other entity, other than a bona fide nonprofit organization licensed to conduct charitable bingo games, who leases any building, structure or premises to organizations licensed under the provisions of Sections 97-33-51 through 97-33-203.

(g) "Operator" means a person or other entity who supplies the charity an electronic facsimile pull-tab device or labor saving device as described in Section 97-33-53. This person or entity may not be engaged in any other form of bingo operations such as a distributor, manufacturer, charity or commercial lessor.

(h) "Pull-tabs" means single or banded tickets or cards each with its face covered to conceal one or more numbers or symbols, where one or more cards or tickets in each set have been designed in advance as winners. "Pull-tabs" shall also mean any device for dispensing pull-tabs.

(i) "Session" means any five-hour time period within one (1) day or six-hour time period within one (1) week.

(j) "Day" means the whole or any part of the time period of twenty-four (24) hours from midnight to midnight.

(k) "Week" means the seven-day period from 12:01 a.m. on Monday until midnight the following Sunday.

(*l*) "Net proceeds" means the gross amount collected from participants less the actual prizes or winnings paid, the actual cost or expenses of conducting the bingo game, any administrative penalties imposed by any state agency against the charitable organization, and any other expense authorized under the Charitable Bingo Law or any regulation promulgated thereunder.

(m) "Gross receipts" means all revenue received from bingo operations.

HISTORY: Laws, 1992, ch. 581, § 4; Laws, 1994, ch. 635, § 2; Laws, 2002, ch. 366, § 2, eff from and after passage (approved Mar. 18, 2002).

Editor's Notes — Sections 97-33-51 through 97-33-81, 97-33-101 through 97-33-109, 97-33-201 and 97-33-203 may be cited as the "Charitable Bingo Law" by provision of § 97-33-50.

Cross References — Mississippi Gaming Commission, see § 75-76-7.

RESEARCH REFERENCES

ALR.

Validity and construction of statute exempting gambling operations carried on by religious, charitable, or other nonprofit organizations from general prohibitions against gambling. 42 A.L.R.3d 663.

Am. Jur.

38 Am. Jur. 2d, Gambling §§ 21, 37.

CJS.

38 C.J.S., Gaming §§ 10, 140-145, 163-165.

66 C.J.S., Nuisance §§ 81, 82.

§ 97-33-55. License to conduct games; application; person or persons responsible; fee.

(1) Any charitable organization desiring to conduct bingo games must obtain a license to do so from the Mississippi Gaming Commission.

(2) Each applicant for such a license shall file with the commission a written application therefor in a form prescribed by the commission on which shall be stated:

(a) The name and address of the applicant, together with sufficient facts relating to its incorporation and organization to enable the commission to determine whether or not the applicant is a bona fide organization;

(b) The names and addresses of its officers;

(c) The place or places where, and the date or dates and the time or times when, bingo games are intended to be conducted by the applicant, under the license applied for;

(d) The items of expense intended to be incurred or paid in connection with the holding, operating and conducting of bingo games and the names and addresses of the persons to whom, and the purposes for which, they are to be paid;

(e) The specific purposes to which the entire net proceeds of the bingo games are to be devoted and in what manner;

(f) That, except as otherwise provided in Section 97-33-69, no commission, salary, compensation, reward or recompense will be paid to any person for holding, operating or conducting bingo games;

(g) A description of all prizes to be offered and given in all bingo games to be held, operated and conducted under such license; and

(h) Such other information as shall be prescribed by the commission by its rules and regulations.

(3) In each application there shall be designated an active member or members of the organization under whom the bingo games are to be held, operated and conducted. The application shall include a statement executed by the applicant and by the member or members so designated, that he or they will be responsible for the holding, operation and conduct of the bingo games in accordance with the terms of the license and the provisions of the commission's rules and regulations governing bingo games and of Sections 97-33-51 through 97-33-203, if such license is granted.

(4) An original application shall be accompanied by a fee of Fifty Dollars ($50.00). Such application fee shall be refunded by the commission to an organization deemed to be an exempt organization pursuant to Section 97-33-107.

HISTORY: Laws, 1992, ch. 581, § 5; Laws, 1994, ch. 635, § 3, eff from and after October 1, 1994.

Editor's Notes — Sections 97-33-51 through 97-33-81, 97-33-101 through 97-33-109, 97-33-201 and 97-33-203 may be cited as the "Charitable Bingo Law" by provision of § 97-33-50.

Cross References — Mississippi Gaming Commission, see § 75-76-7.

Charitable organization licensed under this section authorized to conduct bingo games, see § 97-33-52.

Deposit of all fees and fines collected pursuant to this section into Charitable Bingo Fund, see § 97-33-101.

JUDICIAL DECISIONS

1. Bingo games by charitable organization.

Contrary to appellants' claims that there was proof that there were members of a charitable corporation, which had the authority to elect and replace the board of directors, the fact that the charitable corporation held bingo games was not proof that there were members of the corporation, although Mississippi's Charitable Bingo Law, Miss. Code Ann. § 97-33-55, permits a nonprofit entity to conduct bingo games if the game is held by active members. The corporation may very well have been operating in violation of the law for a decade, and just managed to escape the notice of regulatory authorities. His Way, Inc. v. McMillin, 909 So. 2d 738, 2005 Miss. App. LEXIS 529 (Miss. Ct. App. 2005).

§ 97-33-57. Investigation of qualifications of applicants for licenses; criteria; term of license; denial, refusal, suspension or revocation of license.

(1) The commission shall investigate the qualifications of each applicant and the merits of the application, with due expedition after the filing of the application, and shall make the following determinations:

(a) That the applicant is duly qualified to hold, operate and conduct bingo games under the provisions of Sections 97-33-51 through 97-33-203 and the rules and regulations of the commission governing same.

(b) That the member or members of the organization designated in the application to hold, operate, conduct, or assist in holding, operating, or conducting, the bingo games are bona fide active members of the organization and of good moral character, who have never been convicted of certain offenses as designated by the commission.

(c) That bingo games are to be held, operated and conducted in accordance with the provisions of Sections 97-33-51 through 97-33-203 and in accordance with the rules and regulations of the commission governing same, and that the proceeds thereof are to be disposed of as provided by Sections 97-33-51 through 97-33-203.

(2) If the commission is satisfied that no commission, salary, compensation, reward or recompense whatever, except as otherwise provided in Section 97-33-69, will be paid or given to any person holding, operating or conducting any bingo game, it may issue a license to the applicant for the holding, operating and conducting of bingo games.

(3) No license for holding, operating or conducting bingo games that is issued under Sections 97-33-51 through 97-33-203 shall be effective for more than three (3) calendar years.

(4) The commission shall not issue a license to:

(a) Any person who has been convicted of certain related offenses as established by the commission or who presently has such a charge pending in any state or federal court;

(b) Any person who has ever been convicted of a gambling-related offense in any state or federal court;

(c) Any person who is or has ever been a professional gambler;

(d) Any firm, organization or corporation in which any person as described in paragraphs (a) through (c) is an officer or director, whether compensated or not, or in which such person has a direct or indirect financial interest;

(e) The commission may deny an application for licensure, refuse to renew a license, or suspend or revoke a license for any reason consistent with the purposes of Sections 97-33-51 through 97-33-203 which it deems to be in the interest of the public. However, policies regarding such denial, suspension, revocation or refusal to renew shall be established by rule and regulation. If the commission fails to act upon the license application within sixty (60) days of the date of filing of the application by the charitable organization, such application shall be deemed accepted.

(5) Any significant change in the information submitted on its application for licensure shall be filed by a licensee with the commission within ten (10) days of the change. A significant change shall include, but not be limited to, any change in the officers, directors, managers, proprietors or persons having a direct or indirect financial interest in any licensed organization or entity.

HISTORY: Laws, 1992, ch. 581, § 6; Laws, 1994, ch. 635, § 4; Laws, 2007, ch. 542, § 1, eff from and after July 1, 2007.

Editor's Notes — Sections 97-33-51 through 97-33-81, 97-33-101 through 97-33-109, 97-33-201 and 97-33-203 may be cited as the "Charitable Bingo Law" by provision of § 97-33-50.

§ 97-33-59. Special licenses for emergency financial relief; special charitable limited license requirement.

(1) The commission may issue a special license for the conducting of limited fund-raising bingo games for the benefit of a person, family or group of persons who, because of circumstances which cause a financial crisis of an emergency nature, are in need of immediate fund-raising relief. Bingo games conducted under this section shall consist of no more than two (2) bingo sessions annually by the same person, family or group of persons, at which the total amount of prizes which may be awarded on any calendar day under such a license shall not exceed Fifteen Thousand Dollars ($15,000.00) in cash or other thing or things of value. Except as otherwise provided in this section or as may be otherwise provided by Section 97-33-69(10) or 97-33-107(k), all other provisions of Sections 97-33-51 through 97-33-203 shall apply to the issuance of such special licenses.

(2) The commission shall not authorize any organization to conduct limited bingo games as described in subsection (1) as provided herein unless that organization has first obtained a special charitable limited license from the commission.

(3) All proceeds derived from bingo games conducted under a special charitable limited license shall go to the specific need for which the games are conducted, as outlined in the application for such license.

(4) The fee for a special charitable limited license shall be limited to the actual administrative costs of issuing it.

HISTORY: Laws, 1992, ch. 581, § 7; Laws, 1994, ch. 635, § 5, eff from and after October 1, 1994.

Editor's Notes — Sections 97-33-51 through 97-33-81, 97-33-101 through 97-33-109, 97-33-201 and 97-33-203 may be cited as the "Charitable Bingo Law" by provision of § 97-33-50.

Cross References — Charitable organization licensed under this section authorized to conduct bingo games, see § 97-33-52.

Prize limit in this section an exception to general rule limiting amount of prize money, see § 97-33-67.

§ 97-33-61. Notice and hearing prerequisites to denial of license; judicial review.

No license shall be revoked by the commission until after a hearing is held on due notice. The commission may designate a hearing examiner to hear the case and render a decision. A licensee aggrieved by the decision of the hearing examiner may apply within fifteen (15) days after announcement of the decision in writing to the commission for review of the decision. Review is limited to the record of proceedings before the hearing examiner. The commission may sustain or reverse the hearing examiner's decision.

Any person aggrieved by the final decision of the commission may obtain a judicial review thereof in the circuit court of the county in which the bingo games are conducted. The judicial review must be instituted by filing a petition within ten (10) days after the decision is rendered.

HISTORY: Laws, 1992, ch. 581, § 8; Laws, 1994, ch. 635, § 6, eff from and after October 1, 1994.

Editor's Notes — Sections 97-33-51 through 97-33-81, 97-33-101 through 97-33-109, 97-33-201 and 97-33-203 may be cited as the "Charitable Bingo Law" by provision of § 97-33-50.

JUDICIAL DECISIONS

1. Temporary restraining order.

A county circuit court had authority to enter a temporary restraining order or a temporary injunction allowing an American Legion Post to continue operations while the revocation of its charitable bingo license was on appeal. Am. Legion Post 134 v. Miss. Gaming Comm'n, 798 So. 2d 445, 2001 Miss. LEXIS 71 (Miss. 2001).

The circuit court had jurisdiction to enter a temporary restraining order or a temporary injunction allowing an American Legion Post to continue bingo operations while the revocation of its charitable bingo license was on appeal as this section did not grant an automatic supersedeas. American Legion Post 134 v. Mississippi Gaming Comm'n, 2000 Miss. LEXIS 188 (Miss. Aug. 17, 2000), op. withdrawn, sub. op., 798 So. 2d 445, 2001 Miss. LEXIS 71 (Miss. 2001).

§ 97-33-63. [Reserved].

§ 97-33-65. Commission to control games; entry and inspection by agents; suspension or revocation of license for violations.

The commission shall control all bingo games held, operated or conducted by a licensee to assure that they are fairly held, operated and conducted in accordance with the provisions of the license, the commission's rules and regulations, and the provisions of Sections 97-33-51 through 97-33-203. The commission may suspend or revoke any license for violation of any such rule and regulation or provision. Its officers and agents may enter and inspect any premises where any bingo game is being held, operated and conducted or is intended to be held, operated and conducted, or where any equipment is being used or intended to be used in the conduct thereof.

HISTORY: Laws, 1992, ch. 581, § 9; Laws, 1994, ch. 635, § 7, eff from and after October 1, 1994.

Editor's Notes — Sections 97-33-51 through 97-33-81, 97-33-101 through 97-33-109, 97-33-201 and 97-33-203 may be cited as the "Charitable Bingo Law" by provision of § 97-33-50.

Cross References — Mississippi Gaming Commission, see § 75-76-7.

§ 97-33-67. Length and frequency of sessions; prize limits; designated supervisor responsible for session; purchase of supplies only from licensees; persons under 18 years of age.

(1)(a) No licensee shall hold, operate or conduct any bingo game more often than for two (2) sessions within one (1) day and more often than eight (8) sessions in any one (1) week. Any licensee who holds no more than one (1) session per week shall be entitled to conduct one (1) six-hour session per week. Notwithstanding the provisions of this paragraph, pull-tabs, video pull-tabs or video bingo games may be played for up to eighty (80) hours per week.

(b) No licensee shall hold, operate or conduct any bingo game in more than one (1) physical location. Any bingo operation for which a license has been issued by the Gaming Commission on or after April 1, 1995, and which is located within one thousand five hundred (1,500) feet of a school, church or public library building, shall not conduct bingo sessions during the hours of the school day or during church or library hours.

(2) The total amount of prizes which may be awarded in any one (1) session by a licensee shall not exceed Seven Thousand Five Hundred Dollars ($7,500.00) in cash or other thing or things of value, except as otherwise provided in Section 97-33-59 and except that the total amount of prizes which may be awarded in any one (1) session shall not exceed Eight Thousand Dollars ($8,000.00) if only one (1) session is held in any one (1) week. The Seven Thousand Five Hundred Dollars ($7,500.00) and the Eight Thousand Dollars ($8,000.00) limits do not include payback of pull-tabs or electronic representations. The commission shall establish by rule the method of calculating the value of anything offered as a prize.

(3) Each licensee shall designate a supervisor and a sufficient number of alternate supervisors to be in charge of and primarily responsible for each session of a bingo game. Such individual shall be familiar with the provisions of Sections 97-33-51 through 97-33-203 and the rules and regulations of the commission. Such individual, or alternate who shall be designated as the bingo supervisor, shall supervise all activities of such session and be responsible for

the conduct of all games of such session. The supervisor shall be present at all times on the premises during the session.

(4) No licensee shall purchase or otherwise obtain any gaming supplies or equipment from any distributor, operator or manufacturer until it has first determined that the individual selling or otherwise offering such supplies or equipment has a valid license issued by the commission.

(5) No licensee shall allow any person under eighteen (18) years of age to assist in the holding, operation or conduct of any bingo game. No licensee shall allow any person under eighteen (18) years of age to play a bingo game unless accompanied by his or her parent or legal guardian, except that a licensee may prohibit all persons under eighteen (18) years from entering the licensed premises by posting a written notice to that effect on the premises.

HISTORY: Laws, 1992, ch. 581, § 10; Laws, 1994, ch. 635, § 8; Laws, 1995, ch. 618, § 1; Laws, 2002, ch. 508, § 1, eff from and after passage (approved Apr. 1, 2002).

Editor's Notes — Sections 97-33-51 through 97-33-81, 97-33-101 through 97-33-109, 97-33-201 and 97-33-203 may be cited as the "Charitable Bingo Law" by provision of § 97-33-50.

JUDICIAL DECISIONS

1. In general.

This section does not exist to criminalize the actions of one designated by the statutory signatory to act on his behalf when necessary, but to prevent the operation of any aspect of the games by those not authorized to do so or those with an interest in the outcome of the games. Mississippi Gaming Comm'n v. Baker, 755 So. 2d 1129, 1999 Miss. App. LEXIS 252 (Miss. Ct. App. 1999).

OPINIONS OF THE ATTORNEY GENERAL

Any bingo operation that received its original license prior to April 1, 1995, would be exempt from the provisions of subsection (1)(b) of this section. However, the statute does not prohibit a bingo operation located within one thousand five hundred (1,500) feet of a school or library from receiving a license after April 1, 1995. Johnson, June 16, 1995, A.G. Op. #95-0281.

This section prohibits any bingo operation that receives its license after April 1, 1995, and that is located within one thousand five hundred (1,500) feet of a school or library from conducting bingo sessions during the hours of the school day or during library hours. Johnson, June 16, 1995, A.G. Op. #95-0281.

Pursuant to § 97-33-203 and this section, since a session is defined as a five-hour period of time, there is no need for the Gaming Commission to set a regulation which prorates the amount of prizes allowed or the rent to be paid based on the length of the session. Harvey, October 30, 1996, A.G. Op. #96-0719.

RESEARCH REFERENCES

ALR.

Validity and construction of statute exempting gambling operations carried on by religious, charitable, or other nonprofit organizations from general prohibitions against gambling. 42 A.L.R.3d 663.

Am. Jur.
38 Am. Jur. 2d, Gambling §§ 21, 37.

CJS.
38 C.J.S., Gaming §§ 10, 140-145, 163-165.
66 C.J.S., Nuisance §§ 81, 82.

§ 97-33-69. Active member to conduct games; compensation, rentals and fees regulated; contract to be in writing; furnisher of services or equipment not to conduct games; allowable expenses.

(1) Except as otherwise provided in subsection (3) of this section, no person shall hold, operate, conduct or assist in holding, operating or conducting, any bingo game under any license issued pursuant to Sections 97-33-51 through 97-33-81, except designated supervisors or alternate supervisors designated as provided for in Section 97-33-67(3).

(2) Except as otherwise provided in subsection (3) of this section and as may be otherwise provided pursuant to subsection (10) of this section, no commission, salary, compensation, reward or recompense, including, but not limited to, granting or use of bingo cards without charge or at a reduced charge, shall be paid or given directly or indirectly to the bingo supervisor or alternate supervisor or any person related to such supervisor or alternate supervisor by blood, marriage or business relationship, for the holding, operating or conducting any licensed game or games of chance.

(3) Except as may be otherwise provided pursuant to subsection (10) of this section, any licensee may pay as compensation for all persons involved in the holding, operating or conducting of any licensed game or games of chance, an amount not to exceed Six Hundred Dollars ($600.00) per session. Persons who may be compensated from the Six Hundred Dollars ($600.00) per session amount may include the bingo supervisor or alternate supervisor, callers, runners and cashiers. Neither the bingo supervisor nor any alternate supervisor, or any person related to such supervisor by blood, marriage or business relationship, while being compensated as the bingo supervisor, shall receive any other compensation, directly or indirectly, from the licensee. No employee receiving compensation for the holding, operating or conducting or assisting in the holding, operating or conducting of a bingo game shall receive compensation for more than one (1) job function.

(4)(a) Any corporation, person or entity operating bingo games, under contract, for the benefit of organizations as prescribed in subsection (3) of this section shall be restricted to operating such games for a limit of one (1) such organization authorized to pay employees up to a maximum of Six Hundred Dollars ($600.00) per session. Such corporation, person or entity shall only be authorized to conduct such sessions at one (1) physical location or building.

(b) Any corporation, person or entity operating bingo games, under contract, for the benefit of organizations as prescribed in subsection (3) of this section shall have a written contract with the organization and shall be subject to any rules and regulations promulgated by the commission for the purpose of investigating or regulating contracting agents.

(5) Except as may be otherwise provided pursuant to subsection (10) of this section, no manufacturer, operator, distributor, commercial lessor, or his agents or employees, who directly or indirectly leases premises, sells, leases, otherwise distributes gaming supplies or equipment, or furnishes any commodities or services, in relation to the conducting of any bingo game pursuant to Sections 97-33-51 through 97-33-203 shall take part in the holding, operation or conducting of a bingo game. However, nothing in this section shall prohibit the owner of a premises from having a representative present to protect his interests in the premises.

(6) Except as may be otherwise provided pursuant to subsection (10) of this section, no bingo game shall be conducted with any supplies or equipment except such as shall be owned by the licensee, provided without payment of any compensation by the licensee or purchased from a licensed manufacturer or distributor of such supplies or equipment.

(7) Except as may be otherwise provided pursuant to subsection (10) of this section, no item of expense shall be incurred or paid in connection with the holding, operating or conducting of any bingo game by a licensee, except:

(a) The actual and reasonable costs of purchasing or leasing necessary supplies, equipment and materials to be used exclusively in the holding, operating or conducting of the bingo game; and

(b) The actual and reasonable costs incurred in obtaining and performing necessary bookkeeping, security and janitorial services for the holding, operating or conducting of the bingo game. The reasonableness of the amounts of, and the necessity for, an expense authorized by this subsection shall be determined by the commission.

(8) Except as may be otherwise provided pursuant to subsection (10) of this section, no licensee shall pay any consulting fees to any person for any service performed in relation to the conducting of any charitable game of chance or concession fees to any person who provides refreshments to the participants in any such games.

(9) Except as may be otherwise provided pursuant to subsection (10) of this section, no lease providing for a rental arrangement for premises or equipment shall provide for payment in excess of the reasonable market rental rate for such premises or equipment, and in no case shall any payment be based on a percentage of gross receipts or profits derived from a bingo game. Whether a market rental rate is reasonable shall be determined by the commission.

(10) Administrative exceptions to the provisions of this section with regard to organizations which have demonstrated to the Mississippi Gaming Commission a practice of legitimate operation of such games, may be made by the Mississippi Gaming Commission pursuant to its rules and regulations, as duly adopted and promulgated by the commission; provided that such an administrative exception shall be no more restrictive than the provision of law to which it is an exception.

HISTORY: Laws, 1992, ch. 581, § 11; Laws, 1994, ch. 635; Laws, 1995, ch. 618, § 2; Laws, 2017, ch. 324, § 1, eff from and after July 1, 2017.

Editor's Notes — Sections 97-33-51 through 97-33-81, 97-33-101 through 97-33-109, 97-33-201 and 97-33-203 may be cited as the "Charitable Bingo Law" by provision of § 97-33-50.

Cross References — Except as otherwise provided in §§ 97-33-51 through 97-33-81, all net proceeds from bingo to be expended for purposes for which organization conducting bingo game is created, see § 97-33-52.

Compensation not to be paid to any person for holding, operating or conducting bingo games, except as provided in this section, see § 97-33-55.

Commission, salary, compensation, reward, or recompense paid under this section not impediment to granting of bingo license, see § 97-33-57.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Compensation.

1. In general.

This section does not exist to criminalize the actions of one designated by the statutory signatory to act on his behalf when necessary, but to prevent the operation of any aspect of the games by those not authorized to do so or those with an interest in the outcome of the games. Mississippi Gaming Comm'n v. Baker, 755 So. 2d 1129, 1999 Miss. App. LEXIS 252 (Miss. Ct. App. 1999).

2. Compensation.

While § 97-33-67(1)(a) allows a charity to operate video bingo and pull-tabs out-of-session, the compensation paid to its employees for working during that time must be included in the session pay limitation; thus, pursuant to subsection (3) of this section, the maximum allowable compensation for any two-week period is $400 times 16, or $6,400.00. His Way Homes, Inc. v. Mississippi Gaming Comm'n, 733 So. 2d 764, 1999 Miss. LEXIS 79 (Miss. 1999).

OPINIONS OF THE ATTORNEY GENERAL

Subsection (4)(a) of this section, does not create an exception to the mandate that "members-in-charge" not be compensated in any way. Harvey, March 2, 1995, A.G. Op. #95-0081.

§ 97-33-71. Records and reports to Commission.

(1) Except as may be otherwise provided pursuant to Section 97-33-107(k), the organization which held, operated or conducted the bingo game, and its bingo supervisor or supervisors who were in charge thereof, shall furnish to the commission the following information not less than quarterly:

(a) A verified statement showing the amount of the gross receipts derived from each bingo game, which shall include receipts from the sale of shares, tickets or rights in any manner connected with participation in said game;

(b) Each item of expense incurred or paid, and each item of expenditure made or to be made;

(c) The name and address of each person to whom each such item has been paid or is to be paid, with a detailed description of the merchandise purchased or the service rendered therefor;

(d) The net profit derived from each such bingo game and the uses to which such net profit has been or is to be applied;

(e) A list of prizes offered or given, with the respective values thereof;

(f) The number of participants in each game.

(2) Each licensee shall maintain and keep such books and records as may be necessary to substantiate the particulars of each such report.

(3) All licensees shall maintain records and submit reports as provided by rules of the commission. Such rules may require that all income of a licensee derived from charitable bingo games be recorded to the extent necessary to disclose gross and net income.

HISTORY: Laws, 1992, ch. 581, § 12; Laws, 1994, ch. 635, § 10; Laws, 1995, ch. 618, § 3, eff from and after July 1, 1995.

Editor's Notes — Sections 97-33-51 through 97-33-81, 97-33-101 through 97-33-109, 97-33-201 and 97-33-203 may be cited as the "Charitable Bingo Law" by provision of § 97-33-50.

Cross References — Except as otherwise provided in §§ 97-33-51 through 97-33-81, all net proceeds from bingo to be expended for purposes for which organization conducting bingo game is created, see § 97-33-52.

Reporting provisions of this section applicable to certain expenditures relating to conduct of games, see § 97-33-69.

§ 97-33-73. Gaming and Tax Commissions may examine books and records.

(1) The Mississippi Gaming Commission shall have power to examine or to cause to be examined the books and records of any organization to which such license is issued so far as they may relate to any transactions connected with the holding and conducting of bingo and to examine any manager, officer, director, agent, member or employee thereof under oath in relation to the conduct of any such game, but any information so received shall not be disclosed except so far as may be necessary for the purpose of carrying out the provisions of Sections 97-33-51 through 97-33-203.

(2) The State Tax Commission shall have the power to examine or to cause to be examined the books and records of any organization to which a license is issued for the purpose of determining compliance with the Charitable Bingo Law and any other laws and regulations and to conduct in-depth audits and investigation of the licensee.

HISTORY: Laws, 1992, ch. 581, § 13; Laws, 1994, ch. 635, § 11, eff from and after October 1, 1994.

Editor's Notes — Sections 97-33-51 through 97-33-81, 97-33-101 through 97-33-109, 97-33-201 and 97-33-203 may be cited as the "Charitable Bingo Law" by provision of § 97-33-50.

Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Mississippi Gaming Commission, see § 75-76-7.

§ 97-33-75. Violations; sanctions.

(1) Any person, association or corporation violating any provision of Sections 97-33-51 through 97-33-203 or any rule or regulation of the commission shall be subject to a fine imposed by the commission and to suspension or revocation of its license.

(2) Any person who commits any of the following acts, upon conviction, shall be fined not more than Five Thousand Dollars ($5,000.00) or imprisoned for one (1) year, or both:

(a) Making any false statement in any application for a license under Sections 97-33-51 through 97-33-203, or in any official report to the commission;

(b) Holding, operating or conducting any bingo game without a license;

(c) Knowingly falsifying or making any false entry in any books or records, with respect to any transaction connected with the holding, operating or conducting of any bingo game;

(d) Refusing to allow the commission access to any premises where a game of chance is being conducted or to any book, record or document relating to such conduct;

(e) Intentionally causing, aiding, abetting or conspiring with another to cause any person to violate any provision of Sections 97-33-51 through 97-33-203;

(f) Possessing, displaying, selling or otherwise furnishing to any person any pull-tabs, except as provided for in Section 97-33-77.

(3) Any person who violates any other provision of Sections 97-33-51 through 97-33-203 that is not listed in this section may be imprisoned for not more than six (6) months or fined not more than Five Hundred Dollars ($500.00), or both.

(4) Any conviction of any person pursuant to subsections (2) and (3) of this section shall constitute cause for revocation of the license of such person or the organization with which such person is affiliated.

HISTORY: Laws, 1992, ch. 581, § 14; Laws, 1994, ch. 635, § 12, eff from and after October 1, 1994.

Editor's Notes — Sections 97-33-51 through 97-33-81, 97-33-101 through 97-33-109, 97-33-201 and 97-33-203 may be cited as the "Charitable Bingo Law" by provision of § 97-33-50.

Cross References — Deposit of all fees and fines collected pursuant to this section into Charitable Bingo Fund, see § 97-33-101.

§ 97-33-77. Regulation of pull-tabs.

(1) No organization, distributor, manufacturer, or any representative thereof, either with knowledge or in circumstances whereunder he reasonably

should have known, shall possess, display, put out for play, sell or otherwise furnish to any person any pull-tabs:

(a) In which the winning pull-tabs have not been completely and randomly distributed and mixed among all other pull-tabs in the deal;

(b) In which the location or approximate location of any of the winning pull-tabs can be determined in advance of opening the pull-tabs in any manner or by any device, including but not limited to any pattern in the manufacture, assembly, or packaging of pull-tabs by the manufacturer, by any markings on the pull-tabs or container, or by the hue of a light; or

(c) Which does not conform in any respect to these requirements as to manufacturer, assembly or packaging.

(2) A distributor shall not purchase or be furnished any pull-tabs from a manufacturer of pull-tabs unless all of the following conditions are met:

(a) The manufacturer's label or trademark has been registered with the Mississippi Gaming Commission.

(b) Each individual pull-tab manufactured has conspicuously set forth on it the name of the manufacturer or a label or trademark which identifies its manufacturer.

(c) The pull-tab is of a type approved by the commission for use in Mississippi.

HISTORY: Laws, 1992, ch. 581, § 15, eff from and after October 1, 1992.

Editor's Notes — Sections 97-33-51 through 97-33-81, 97-33-101 through 97-33-109, 97-33-201 and 97-33-203 may be cited as the "Charitable Bingo Law" by provision of § 97-33-50.

Cross References — Mississippi Gaming Commission, see § 75-76-7.

Provisions of this section an exception to general prohibition against possessing, displaying, selling or furnishing pull-tabs, see § 97-33-75.

§ 97-33-79. Regulation of manufacturers of supplies and equipment; license required; sale of supplies only to licensees; gifts, etc.; records and reports.

(1) No person or other entity shall fabricate, concoct or manufacture any supplies or equipment for use in the conducting of any bingo game authorized under Sections 97-33-51 through 97-33-203, including but not limited to bingo equipment, pull-tabs, or electronic representations, within this state or for use within this state without having obtained a manufacturer's license from the commission.

(2) No person or other entity shall sell, offer for sale, or otherwise furnish any other person any supplies or equipment of use in the conduct of any bingo game authorized under Sections 97-33-51 through 97-33-203, including but not limited to bingo equipment and pull-tabs without having obtained a distributor's or operator's license from the commission.

(3) No person licensed as a manufacturer, distributor or operator shall sell or otherwise make available any such gaming supplies or equipment to any individual unless he has first determined that the individual is a licensed

distributor or is acting as an agent of an organization which has a valid license issued by the commission.

(4) No manufacturer, distributor or operator of gaming supplies or equipment shall directly or indirectly give gifts, trips, prizes, premiums or other such gratuities to any charitable gaming organization, its employees, or commercial lessors.

(5) Each manufacturer, distributor or operator of gaming supplies or equipment shall maintain records and submit reports as required by rules of the commission. The rules may require maintenance of purchase and sale invoices of all gaming supplies and equipment manufactured or distributed, whether by sale, lease, rental, loan or donation, to any charitable gaming organization.

HISTORY: Laws, 1992, ch. 581, § 16; Laws, 1994, ch. 635, § 13, eff from and after October 1, 1994.

Editor's Notes — Sections 97-33-51 through 97-33-81, 97-33-101 through 97-33-109, 97-33-201 and 97-33-203 may be cited as the "Charitable Bingo Law" by provision of § 97-33-50.

§ 97-33-81. Overlap of financial interest between organizations conducting games and manufacturers, distributors, or lessors.

(1) No organization which conducts charitable bingo games shall be a manufacturer, distributor or operator of supplies or equipment for such games.

(2) No officer, director or manager of an organization which conducts charitable bingo games shall:

(a) Have a direct or indirect financial interest in any entity which manufactures or distributes supplies or equipment for charitable bingo games;

(b) Serve as an officer, director, shareholder, proprietor or employee of an entity which manufactures or distributes supplies or equipment for charitable bingo games; or

(c) Serve as an officer, director, shareholder, proprietor or employee of a commercial lessor who leases buildings, structures or premises to organizations licensed under the provisions of Sections 97-33-51 through 97-33-203.

(3) No entity which manufactures or distributes supplies or equipment for charitable bingo games of chance; no officer, director, shareholder, proprietor or employee of such entity; and no person having a direct or indirect financial interest in such an entity shall lease premises, directly or indirectly, to an organization for purposes of conducting charitable bingo games of chance.

(4) No entity or person described in subsections (1), (2) or (3) of this section shall serve as a commercial lessor.

HISTORY: Laws, 1992, ch. 581, § 17; Laws, 1994, ch. 635, § 14, eff from and after October 1, 1994.

Editor's Notes — Sections 97-33-51 through 97-33-81, 97-33-101 through 97-33-

109, 97-33-201 and 97-33-203 may be cited as the "Charitable Bingo Law" by provision of § 97-33-50.

§ 97-33-81. Overlap of financial interest between organizations conducting games and manufacturers, distributors, or lessors.

(1) No organization which conducts charitable bingo games shall be a manufacturer, distributor or operator of supplies or equipment for such games.

(2) No officer, director or manager of an organization which conducts charitable bingo games shall:

(a) Have a direct or indirect financial interest in any entity which manufactures or distributes supplies or equipment for charitable bingo games;

(b) Serve as an officer, director, shareholder, proprietor or employee of an entity which manufactures or distributes supplies or equipment for charitable bingo games; or

(c) Serve as an officer, director, shareholder, proprietor or employee of a commercial lessor who leases buildings, structures or premises to organizations licensed under the provisions of Sections 97-33-51 through 97-33-203.

(3) No entity which manufactures or distributes supplies or equipment for charitable bingo games of chance; no officer, director, shareholder, proprietor or employee of such entity; and no person having a direct or indirect financial interest in such an entity shall lease premises, directly or indirectly, to an organization for purposes of conducting charitable bingo games of chance.

(4) No entity or person described in subsections (1), (2) or (3) of this section shall serve as a commercial lessor.

HISTORY: Laws, 1992, ch. 581, § 17; Laws, 1994, ch. 635, § 14, eff from and after October 1, 1994.

Editor's Notes — Sections 97-33-51 through 97-33-81, 97-33-101 through 97-33-109, 97-33-201 and 97-33-203 may be cited as the "Charitable Bingo Law" by provision of § 97-33-50.

§§ 97-33-83 through 97-33-99. [Reserved].

§ 97-33-103. Annual report by Commission.

(1) The commission shall annually prepare and submit a comprehensive report on the scope and nature of charitable bingo game activities in this state and impact of the commission on such activities. The report shall be submitted

to the Lieutenant Governor, the Speaker of the House of Representatives, the Chairmen of the House and Senate Judiciary Committees, the Chairman of the House Ways and Means Committee and the Chairman of the Senate Finance Committee.

(2) The commission shall furnish a copy of its rules and regulations, including any amendments thereto as they are adopted, pursuant to the Charitable Bingo Law, to the Chairman and Counsel of the House Ways and Means Committee and the Chairman and Counsel of the Senate Finance Committee. Further, upon a written request from any member of the Legislature, the commission shall furnish such rules and regulations to the member, by return United States Mail.

HISTORY: Laws, 1992, ch. 581, § 19; Laws, 1994, ch. 635, § 16, eff from and after October 1, 1994.

§ 97-33-105. Commission personnel not to have interest in organization conducting bingo or manufacturing or distributing supplies or equipment.

Neither the director nor any employee of the commission shall be an officer, director or manager of any organization licensed by the state to conduct charitable bingo games or have a direct or indirect financial interest in any entity manufacturing or distributing supplies or equipment used in such games.

HISTORY: Laws, 1992, ch. 581, § 20, eff from and after October 1, 1992.

Editor's Notes — Sections 97-33-51 through 97-33-81, 97-33-101 through 97-33-109, 97-33-201 and 97-33-203 may be cited as the "Charitable Bingo Law" by provision of § 97-33-50.

§ 97-33-107. Functions, duties, and responsibilities of Commission.

In connection with its regulation of charitable bingo games, the commission shall have the following functions, duties and responsibilities:

(a) To issue and renew annual state licenses required by law for organizations conducting bingo games and for manufacturers, distributors or operators of supplies or equipment for such games;

(b) To assess and collect fees not to exceed two and one-half percent (2-½%) of the net proceeds of pull-tabs, electronic bingo machines and electronic pull-tab machines, which fees shall be limited to the amounts necessary to administer the Charitable Bingo Law;

(c) To assess and collect fees equal to one percent (1%) of the gross proceeds of each bingo session conducted by a Class "A" charitable organization and equal to one-half (½) of one percent (1%) of the gross proceeds of each bingo session conducted by a Class "B" or a Class "C" charitable organization; provided, however, that the fees assessed and collected under this subsection (c) shall not apply to pull-tabs, electronic bingo machines or electronic pull-tab machines as described in subsection (b) above; and provided, that the fees shall not be collected in any bingo session held by a religious organization which has been in existence for ten (10) years or longer, held on the premises owned by the religious organization, and held without any person being compensated for operating the game, and until the gross proceeds of bingo games conducted by such organization exceed Fifty Thousand Dollars ($50,000.00) during the calendar year;

(d) To deny applications for licensure or license renewal and to issue orders for suspension or revocation of licenses issued pursuant to Sections 97-33-51 through 97-33-203;

(e) To monitor licensees to ensure compliance with all provisions of law and regulations relative to charitable bingo games through routine scheduled and unscheduled inspections, investigations and audits;

(f) To enforce all provisions of law and regulations relative to charitable bingo games and to assist local law enforcement agencies in these enforcement responsibilities and bingo enforcement agents shall have the powers of a peace officer;

(g) To establish and assess penalties for violations of regulations relative to charitable bingo games;

(h) To familiarize the members of organizations which conduct charitable bingo games of chance, with provisions of the Charitable Bingo Law and other applicable laws and regulations;

(i) To adopt rules and regulations to provide for the sale or transfer of surplus supplies or equipment from one licensed organization to another and such other rules and regulations as are necessary to carry out the purposes and functions of Sections 97-33-51 through 97-33-203, including the adoption of rules and regulations pursuant to Section 97-33-69(10) which may provide for differing requirements, with regard to the number of participants, sessions, amount of prizes offered, proceeds received or other factors which affect the regulatory and administrative burdens on organizations operating charitable bingo games, for a certain class of organizations, provided that such rules and regulations shall be no more restrictive than the provisions of law that govern such factors;

(j) To prescribe rules and regulations creating a class of organizations that are exempt from the purchase of reprinted tickets as provided for in paragraph (c) of this section based on the number of participants or the amount of prizes offered or other factors which affect the regulatory and administrative burdens on the organizations imposed by the commission; and

(k) To establish the classes described in this paragraph of charitable organizations that are licensed to conduct bingo games and to prescribe rules and regulations to provide for differing reporting requirements imposed upon each different class; provided that such rules and regulations shall be no more restrictive than the provisions of law that relate to reporting requirements. Such classes of organizations are as follows:

(i) Class "A" shall be composed of licensed charitable organizations which conduct bingo games in which the prizes awarded total an aggregate amount in excess of Five Thousand Dollars ($5,000.00) per session;

(ii) Class "B" shall be composed of licensed charitable organizations which conduct bingo games in which the prizes awarded total an aggregate amount of not less than Two Thousand Five Hundred Dollars ($2,500.00) and not more than Five Thousand Dollars ($5,000.00);

(iii) Class "C" shall be composed of licensed charitable organizations which conduct bingo games in which the prizes awarded total an aggregate amount of less than Two Thousand Five Hundred Dollars ($2,500.00).

HISTORY: Laws, 1992, ch. 581, § 21; Laws, 1994, ch. 635, § 17; Laws, 1995, ch. 511, § 1; Laws, 1999, ch. 490, § 1, eff from and after July 1, 1999.

Editor's Notes — Sections 97-33-51 through 97-33-81, 97-33-101 through 97-33-109, 97-33-201 and 97-33-203 may be cited as the "Charitable Bingo Law" by provision of § 97-33-50.

Cross References — Application fees for bingo license refunded to organizations deemed to be exempt organizations pursuant to this section, see § 97-33-55.

§ 97-33-109. Monitoring of licensees; enforcement powers and actions; prosecutions; penalties.

(1) The commission shall monitor the conduct or business of licensees, both on a routine scheduled and an unscheduled basis, to the extent necessary to ensure compliance with the provisions of charitable bingo game laws and regulations of the state.

(2) In carrying out its enforcement responsibilities, the commission may:

(a) Inspect and examine all premises in which charitable bingo games are conducted or supplies or equipment for such games are manufactured and distributed;

(b) Inspect all such supplies and equipment in, upon or about such premises;

(c) Seize and remove from such premises and impound such supplies and equipment for the purpose of examination and inspection pursuant to an appropriate court order;

(d) Demand access to and audit and inspect books and records of licensees for the purpose of determining compliance with laws and regulations relative to charitable bingo games;

(e) Conduct in-depth audits and investigations; and

(f) Mandate that internal controls be executed in accordance with the provisions of the Charitable Bingo Law and other applicable laws and regulations.

(3) The commission shall require licensees to maintain records and submit reports.

(4) In addition to license revocation or suspension or any criminal penalty imposed, the commission may assess a fine against any person who violates any law or regulation relative to charitable bingo games. Such a fine shall only be assessed after notice and an opportunity for a hearing to be held.

(5) All departments, commissions, boards, agencies, officers and institutions of the state, and all subdivisions thereof, shall cooperate with the commission in carrying out its enforcement responsibilities.

(6) Except as otherwise authorized in Section 7-5-39, the Attorney General shall be the attorney for the commission in regard to its duties to regulate the Charitable Bingo Law and he shall represent it in all legal proceedings and shall prosecute any civil action for a violation of the provisions of Sections 97-33-51 through 97-33-203 or the rules and regulations of the commission.

(7) It is the duty of the sheriffs, deputy sheriffs and police officers of this state to assist the commission in the enforcement of the provisions of Sections 97-33-51 through 97-33-203 and to arrest and complain against any person violating the provisions of Sections 97-33-51 through 97-33-203. It is the duty of the district attorneys of this state to prosecute all violations of the provisions of Sections 97-33-51 through 97-33-203 if requested to do so by the commission.

(8)(a) Whenever any person who is a resident of the State of Mississippi has reason to believe that a person or organization is or has violated the provisions of Sections 97-33-51 through 97-33-203 and that proceedings would be in the public interest, he may bring an action in the name of the state against such person to restrain by temporary or permanent injunction such violation, upon at least five (5) days' summons before the hearing of the action. The action shall be brought in the chancery or county court of the county in which such violation has occurred or, with consent of the parties, may be brought in the chancery or county court of the county in which the State Capitol is located. The said courts are authorized to issue temporary or permanent injunctions to restrain and prevent violations of Sections 97-33-51 through 97-33-203, and such injunctions shall be issued without bond.

(b) Any person who violates the terms of an injunction issued under this subsection shall forfeit and pay to the state a civil penalty of not more than Five Thousand Dollars ($5,000.00) per violation which shall be payable to the General Fund of the State of Mississippi. For the purposes of this subsection, the chancery or county court issuing an injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the person bringing the action may petition for recovery of civil penalties.

(c) In any action brought under this subsection, if the court finds that a person is willfully violating the provisions of Sections 97-33-51 through 97-33-203, the person bringing the action, upon petition to the court, may recover on behalf of the state a civil penalty of not exceeding Five Hundred Dollars ($500.00) per violation which shall be payable to the General Fund of the State of Mississippi.

(d) No penalty authorized by this subsection shall be deemed to limit the court's powers to insure compliance with its orders, decrees and judgments, or punish for the violations thereof.

(e) For purposes of this subsection, a willful violation occurs when the party committing the violation knew or should have known that his conduct was a violation of the provisions of Sections 97-33-51 through 97-33-203.

HISTORY: Laws, 1992, ch. 581, § 22; Laws, 1994, ch. 635, § 18; Laws, 2012, ch. 546, § 43, eff from and after July 1, 2012.

Editor's Notes — Sections 97-33-51 through 97-33-81, 97-33-101 through 97-33-109, 97-33-201 and 97-33-203 may be cited as the "Charitable Bingo Law" by provision of § 97-33-50.

OPINIONS OF THE ATTORNEY GENERAL

The Mississippi Gaming Commission has the statutory authority to conduct an audit of a charitable gaming licensee. Thornton, August 6, 1999, A.G. Op. #99-0167.

RESEARCH REFERENCES

ALR.

Validity and construction of statute exempting gambling operations carried on by religious, charitable, or other nonprofit organizations from general prohibitions against gambling. 42 A.L.R.3d 663.

Am. Jur.

38 Am. Jur. 2d, Gambling §§ 21, 37.

CJS.

38 C.J.S., Gaming §§ 10, 140-145, 163-165.

66 C.J.S., Nuisance §§ 81, 82.

§§ 97-33-111 through 97-33-199. [Reserved].

§ 97-33-201. Licensure as manufacturer, distributor, or operator of supplies or equipment or as commercial lessor; application; fee; requirements; denial, refusal to renew, suspension or revocation; grounds.

(1)(a) Any organization or person seeking licensure as a manufacturer, distributor or operator of bingo gaming supplies or equipment, shall submit an application to the commission on forms provided for such purposes. Such application shall contain such information as may be reasonably required by rules of the commission. The application shall be accompanied by a fee as established by the commission.

(b) The commission shall investigate all applications for licensure and, in addition to the information required on the application, may require the applicant to furnish such additional information as it deems necessary.

(2) The commission shall not issue a license under this section to:

(a) Any person who has been convicted of certain related offenses as established by the commission or who presently has such a charge pending in any state or federal court;

(b) Any person who has ever been convicted of a gambling-related offense in any state or federal court;

(c) Any person who is or has ever been a professional gambler;

(d) Any firm, organization or corporation in which any person as described in paragraphs (a) through (c) of this subsection is an officer or director, whether compensated or not, or in which such person has a direct or indirect financial interest;

(e) Any person, firm, organization, entity or corporation which has a direct or indirect financial interest in a licensed charity.

(3) The commission may deny an application for licensure, refuse to renew a license, or suspend or revoke a license for any reason consistent with the purposes of Sections 97-33-201 and 97-33-203 which it deems to be in the interest of the public. However, policies regarding such denial, suspension, revocation or refusal to renew shall be established by rule and regulation.

(4) Any significant change in the information submitted on its application for licensure shall be filed by a licensee with the commission within ten (10) days of the change. A significant change shall include but not be limited to any change in the officers, directors, managers, proprietors or persons having a direct or indirect financial interest in any licensed organization or entity.

HISTORY: Laws, 1992, ch. 581, § 23; Laws, 1994, ch. 635, § 19; Laws, 1999, ch. 490, § 2, eff from and after July 1, 1999.

Editor's Notes — Sections 97-33-51 through 97-33-81, 97-33-101 through 97-33-109, 97-33-201 and 97-33-203 may be cited as the "Charitable Bingo Law" by provision of § 97-33-50.

Cross References — Deposit of all fees and fines collected pursuant to this section into Charitable Bingo Fund, see § 97-33-101.

§ 97-33-203. Commercial lessor's license; rental rates and other charges allowable; length and frequency of rentals; agreements with distributors.

(1) No lease of any premises by a commercial lessor to any charitable organization for a charitable bingo game shall provide for payment in excess of the reasonable market rental rate for such premises. The commission shall determine whether a market rental rate for such premises is reasonable. No lease shall provide for rental for less than a five-hour session. No more than two (2) sessions shall be conducted within one (1) day and more often than eight (8) sessions in any one (1) week on the premises of a commercial lessor. Any licensee who holds no more than one (1) session per week shall be entitled to conduct one (1) six-hour session per week.

(2) No commercial lessor shall require the payment of any other cost or fee from an organization licensed to hold, operate or conduct bingo games other than the rental amount provided for by the rental agreement or contract or charge admission fees to persons entering the premises to participate in the games.

(3) No commercial lessor leasing premises for authorized charitable bingo game activities shall enter into any agreement with a distributor of gaming supplies for the use, purchase, promotion or sale of supplies to be used in such bingo games.

HISTORY: Laws, 1992, ch. 581, § 24; Laws, 1994, ch. 635, § 20; Laws, 1999, ch. 490, § 3, eff from and after July 1, 1999.

Editor's Notes — Sections 97-33-51 through 97-33-81, 97-33-101 through 97-33-109, 97-33-201 and 97-33-203 may be cited as the "Charitable Bingo Law" by provision of § 97-33-50.

Cross References — Deposit of all fees and fines collected pursuant to this section into Charitable Bingo Fund, see § 97-33-101.

Commission authorized to deny, refuse to renew, suspend, or revoke license to manufacturer, distributor, or operator of equipment or supplies or to lessor, consistent with purposes of this section, see § 97-33-201.

JUDICIAL DECISIONS

1. Appraisals.

The Gaming Commission may reject an appraisal submitted pursuant to subsection (2) of this section and may require another appraisal to aid it in determining the reasonableness of the proposed rental rate for the premises on the ground that the appraisal was not based on the proper benchmark. Mississippi Gaming Comm'n v. Tupelo Indus., Inc., 747 So. 2d 287, 1999 Miss. App. LEXIS 328 (Miss. Ct. App. 1999).

OPINIONS OF THE ATTORNEY GENERAL

Pursuant to this section and § 97-33-67 since a session is defined as a five-hour period of time, there is no need for the Gaming Commission to set a regulation which prorates the amount of prizes allowed or the rent to be paid based on the length of the session. Harvey, October 30, 1996, A.G. Op. #96-0719.

FANTASY CONTEST ACT

Sec.
97-33-301. Short title.
97-33-303. Definitions.
97-33-305. Procedures to be implemented by fantasy contest operator; annual third-party independent audit to insure compliance with section.
97-33-307. Licensure of fantasy contest operators.
97-33-309. Civil penalty for violation.
97-33-311. Applicability of Gaming Control Act to fantasy contests.
97-33-313. Resolution of disputes over winnings.
97-33-315. Investigations by executive director; hearing to limit, condition, suspend or revoke license; actions; review; automatic resolution.
97-33-317. Fees.

§ 97-33-301. Short title.

Sections 97-33-301 through 97-33-317 shall be known as the "Fantasy Contest Act."

HISTORY: Laws, 2016, ch. 488, § 2; Laws, 2017, ch. 336, § 1, eff from and after July 1, 2017.

Editor's Notes — Laws of 2017, ch. 336, § 12, effective March 13, 2017, provides:

"SECTION 12. Application for licensure as a fantasy contest operator may be made at any time."

Laws of 2017, ch. 336, § 13, provides:

"SECTION 13. Section 12 of this act is not included to be codified and is effective from and after its passage (approved March 13, 2017); the remainder of this act shall take effect and be in force from and after July 1, 2017."

§ 97-33-303. Definitions.

As used in Sections 97-33-301 through 97-33-317, the following terms shall have the meanings ascribed unless the context requires otherwise:

(a) "Cash prize" means winnings in the form of cash or cash equivalents and includes credits to a player's account with an operator.

(b) "Commission" means the Mississippi Gaming Commission created in Section 75-76-7.

(c) "Confidential information" means information related to the play of a fantasy contest by fantasy contest players obtained as a result of or by virtue of a person's employment.

(d) "Entry fee" means cash or a cash equivalent that is required to be paid to an operator to participate in a fantasy contest.

(e) "Executive director" means the Executive Director of the Mississippi Gaming Commission.

(f) "Fantasy contest" or "contest " means a simulated game in which:

(i) Winning outcomes are determined predominately by accumulated statistical results of the performance of individual athletes in actual sporting events; and

(ii) Winning outcomes are not based on the score, point spread, or any performance of any single actual sports team or combination of teams or solely on any single performance of an individual athlete in any single actual sporting event.

(g) "Highly experienced player" means an individual who has:

(i) Entered more than one thousand (1,000) contests offered by a particular operator; or

(ii) Won more than three (3) prizes which are each valued at One Thousand Dollars ($1,000.00) or more, from a particular operator.

(h) "Operator" or "fantasy contest operator" means a person or entity that offers fantasy contests, requires an entry fee, and offers a cash prize.

(i) "Player" means a person who participates in a fantasy contest offered by an operator.

(j) "Sporting event" means an athletic game or team competition in which an individual athlete's performance is used to accumulate statistical results.

HISTORY: Laws, 2016, ch. 488, § 3; Laws, 2017, ch. 336, § 2, eff from and after July 1, 2017.

Editor's Notes — Laws of 2017, ch. 336, § 12, effective March 13, 2017, provides:

"SECTION 12. Application for licensure as a fantasy contest operator may be made at any time."

Laws of 2017, ch. 336, § 13, provides:

"SECTION 13. Section 12 of this act is not included to be codified and is effective from and after its passage (approved March 13, 2017); the remainder of this act shall take effect and be in force from and after July 1, 2017."

§ 97-33-305. Procedures to be implemented by fantasy contest operator; annual third-party independent audit to insure compliance with section.

(1) Fantasy contests are legal in this state. A fantasy contest operator must comply with the provisions of this section if the operator's total player roster for all fantasy contests consists of one hundred (100) or more members of the general public.

(2) A fantasy contest operator must implement commercially reasonable procedures for fantasy contests with an entry fee to:

(a) Prevent employees of the operator, and relatives living in the same household with an employee of an operator, from competing in fantasy contests offered by an operator in which the operator offers a cash prize;

(b) Prevent sharing with third parties of confidential information that could affect fantasy contest play until the information is made publicly available;

(c) Prevent the operator from participating in a fantasy contest offered by the operator;

(d) Verify that a fantasy contest player is eighteen (18) years of age or older except as required in Section 97-33-307(5);

(e) Ensure that individuals who participate or officiate in a sporting event or who own, manage or coach a team or player who participates in a sporting event will not knowingly be allowed to enter a fantasy contest that is determined, in whole or in part, on accumulated statistical results that include a sporting event in which the individual could be involved as an athlete, official, owner, manager or coach;

(f) Allow individuals to restrict themselves from entering a fantasy contest upon request and provide reasonable steps to prevent the person from entering fantasy contests offered by the operator;

(g) Disclose the number of entries that a player may submit to each fantasy contest and provide reasonable steps to prevent players from submitting more than the allowable number;

(h) Restrict the number of entries submitted by a single player for any contest as follows:

(i) An operator shall not allow a player to submit more than one (1) entry in a contest involving twelve (12) or fewer players.

(ii) If the number of players in a contest is more than twelve (12) but fewer than thirty-seven (37), an operator shall not allow a player to submit more than two (2) entries.

(iii) If the number of players in a contest is at least thirty-seven (37) but no more than one hundred (100), an operator shall not allow a player to submit more than three (3) entries.

(iv) In any contest involving more than one hundred (100) players, an operator shall not allow a player to submit more than the lesser of:

1. Three percent (3%) of all entries; or
2. One hundred fifty (150) entries.

(v) For all advertised fantasy contests, the operator must prominently include information about the maximum number of entries that may be submitted for that contest.

(vi) An operator may establish fantasy contests in which there is no restriction on the number of entries, if those contests constitute less than two percent (2%) of the total number of contests it offers, and if the operator clearly discloses:

1. That there are no limits on the number of entries by each player in the contest; and

2. That the cost of participating in such a contest is Fifty Dollars ($50.00) or more per entry;

(i) Offer introductory procedures for players that are prominently displayed on the main page of the operator's platform to explain contest play and how to identify a highly experienced player;

(j) Identify all highly experienced players in every fantasy contest by a symbol attached to the players' usernames, or by other easily visible means, on all platforms supported by the operator; and

(k) Segregate fantasy contest player funds from operational funds or maintain a reserve in the form of cash, cash equivalents, payment processor reserves and receivables, an irrevocable letter of credit, a bond, or a combination thereof, in the amount of the total account balances of the fantasy contest players for the benefit and protection of the funds held in the accounts.

(3) An operator shall not offer contests based on the performance of participants in collegiate, high-school or youth sports events.

(4) A fantasy contest operator offering fantasy contests with an entry fee in this state shall comply with audit procedures adopted by the commission to ensure compliance with this section.

(5)(a) Advertisements for contests and prizes offered by an operator shall not target prohibited participants, minors, or self-excluded persons.

(b) Representations or implications about average winnings from contests shall not be unfair or misleading. Such representations shall include, at a minimum:

(i) The median and mean net winnings of all players participating in contests offered by the operator; and

(ii) The percentage of winnings awarded by the operator to highly experienced players participating in contests offered by the operator within the preceding calendar year.

(6) Operators shall prohibit the use of third-party scripts or scripting programs for any contest and ensure that measures are in place to deter, detect and, to the extent reasonably possible, prevent cheating, including collusion, and the use of cheating devices, including use of software programs that submit entry fees or adjust the athletes selected by a player.

(7) The values of all prizes and awards offered to winning players must be established and made known to the players in advance of the contest.

HISTORY: Laws, 2016, ch. 488, § 4; Laws, 2017, ch. 336, § 3, eff from and after July 1, 2017.

Editor's Notes — Laws of 2017, ch. 336, § 12, effective March 13, 2017, provides:
"SECTION 12. Application for licensure as a fantasy contest operator may be made at any time."
Laws of 2017, ch. 336, § 13, provides:
"SECTION 13. Section 12 of this act is not included to be codified and is effective from and after its passage (approved March 13, 2017); the remainder of this act shall take effect and be in force from and after July 1, 2017."

§ 97-33-307. Licensure of fantasy contest operators.

(1) An operator offering fantasy contests to be played by persons in this state must obtain a license from the commission to conduct fantasy contests within this state.

(2) An operator offering fantasy contests within this state must be lawfully conducting business within this state.

(3) Application for licensure shall be made to the executive director on forms furnished by the executive director and in accordance with the regulations of the commission. The application shall include:

(a) The name of the proposed licensee.

(b) The location of his place or places of business.

(c) The names of all persons directly or indirectly interested in the business and the nature of such interest.

(d) Complete information and details with respect to the applicant's antecedents, habits, character, business activities, financial affairs and business associates, covering at least a ten-year period immediately preceding the date of the application.

(e) The applicant's criminal history.

(f) Evidence of compliance with Section 97-33-305(2).

(g) Such other information and details as the commission or the executive director may require in order to discharge their duties properly.

(4) An application to conduct fantasy contests shall not be granted unless the applicant has satisfied the commission that:

(a) The applicant has adequate business probity, competence and experience; and

(b) The proposed financing of the entire operation is:

(i) Adequate for the nature of the proposed operation; and

(ii) From a suitable source; any lender or other source of money or credit which the commission finds does not meet the standards set forth in this paragraph (b) may be deemed unsuitable.

(c) An application for a license to conduct fantasy contests constitutes a request for a determination of the general character, integrity and ability to participate or engage in, or be associated with fantasy contests of any individual associated with the applicant. Any written or oral statement made in the course of an official proceeding of the commission or the executive director or any testimony of a witness testifying under oath that is relevant to the purpose of the proceeding is absolutely privileged and does not impose liability for defamation or constitute a ground for recovery in any civil action.

(d) The commission, in its discretion, may grant a license to a corporation that has complied with the provisions of Sections 97-33-301 through 97-33-317.

(e) The commission, in its discretion, may grant a license to a limited partnership that has complied with the provisions of Sections 97-33-301 through 97-33-317.

(f) No limited partnership, except one whose sole limited partner is a publicly traded corporation that is licensed by the commission, or business trust or organization or other association of a quasi-corporate character is eligible to receive or hold any license under Sections 97-33-301 through 97-33-317 unless all persons having any direct or indirect interest therein of any nature whatsoever, whether financial, administrative, policymaking or supervisory, are individually qualified to be licensed under the provisions of Sections 97-33-301 through 97-33-317.

(5) Only a licensee under the Gaming Control Act may offer on-premises fantasy contests in the licensee's licensed gaming establishment. It is illegal to offer on-premises fantasy contests at any other commercial or business establishment. An operator offering on-premises fantasy contests under this subsection (5) must verify that a fantasy contest player is twenty-one (21) years of age or older.

(6) Each applicant for licensure as a fantasy contest operator shall pay an application fee of Five Thousand Dollars ($5,000.00). A license is valid for three (3) years.

HISTORY: Laws, 2016, ch. 488, § 5; Laws, 2017, ch. 336, § 4, eff from and after July 1, 2017.

Editor's Notes — Laws of 2017, ch. 336, § 12, effective March 13, 2016, provides:

"SECTION 12. Application for licensure as a fantasy contest operator may be made at any time."

Laws of 2017, ch. 336, § 13, provides:

"SECTION 13. Section 12 of this act is not included to be codified and is effective from and after its passage (approved March 13, 2017); the remainder of this act shall take effect and be in force from and after July 1, 2017."

Cross References — Gaming Control Act, see § 75-76-1 et seq.

§ 97-33-309. Civil penalty for violation.

A person, firm, corporation, association, agent or employee violating the Fantasy Contest Act shall be subject to a civil penalty of not more than One Thousand Dollars ($1,000.00) for each separate violation not to exceed Fifty Thousand Dollars ($50,000.00), which shall accrue to the state as an administrative remedy as established in Section 97-33-315.

HISTORY: Laws, 2016, ch. 488, § 6; Laws, 2017, ch. 336, § 5, eff from and after July 1, 2017.

Editor's Notes — Laws of 2017, ch. 336, § 12, effective March 13, 2017, provides:
"SECTION 12. Application for licensure as a fantasy contest operator may be made at any time."
Laws of 2017, ch. 336, § 13, provides:
"SECTION 13. Section 12 of this act is not included to be codified and is effective from and after its passage (approved March 13, 2017); the remainder of this act shall take effect and be in force from and after July 1, 2017."

§ 97-33-311. Applicability of Gaming Control Act to fantasy contests.

The Gaming Control Act shall not apply to fantasy contests, except as authorized in Sections 97-33-301 through 97-33-317.

HISTORY: Laws, 2016, ch. 488, § 7; Laws, 2017, ch. 336, § 6, eff from and after July 1, 2017.

Editor's Notes — Laws of 2017, ch. 336, § 12, effective March 13, 2017, provides:
"SECTION 12. Application for licensure as a fantasy contest operator may be made at any time."
Laws of 2017, ch. 336, § 13, provides:
"SECTION 13. Section 12 of this act is not included to be codified and is effective from and after its passage (approved March 13, 2017); the remainder of this act shall take effect and be in force from and after July 1, 2017."
Cross References — Gaming Control Act, see § 75-76-1 et seq.

§ 97-33-313. Resolution of disputes over winnings.

(1) Disputes over winnings shall be resolved under the procedures set forth in Sections 75-76-157 through 75-76-173.

(2) Failure to notify the executive director or patron as provided in Section 75-76-159 is grounds for disciplinary action pursuant to Section 97-33-315.

HISTORY: Laws, 2016, ch. 488, § 8; Laws, 2017, ch. 336, § 7, eff from and after July 1, 2017.

Editor's Notes — Laws of 2017, ch. 336, § 12, effective March 13, 2017, provides:
"SECTION 12. Application for licensure as a fantasy contest operator may be made at any time."
Laws of 2017, ch. 336, § 13, provides:
"SECTION 13. Section 12 of this act is not included to be codified and is effective from and after its passage (approved March 13, 2017); the remainder of this act shall take effect and be in force from and after July 1, 2017."

§ 97-33-315. Investigations by executive director; hearing to limit, condition, suspend or revoke license; actions; review; automatic resolution.

(1) The executive director shall make appropriate investigations:

(a) To determine whether there has been any violation of Sections 97-33-301 through 97-33-317 or of any regulations adopted thereunder.

(b) To determine any facts, conditions, practices or matters which it may deem necessary or proper to aid in the enforcement of any such law or regulation.

(c) To aid in adopting regulations.

(d) To secure information as a basis for recommending legislation relating to Sections 97-33-301 through 97-33-317.

(e) To determine annual compliance with Sections 97-33-301 through 97-33-317.

(2) If after any investigation the executive director is satisfied that a license should be limited, conditioned, suspended or revoked, he shall initiate a hearing by filing a complaint with the commission and transmit therewith a summary of evidence in his possession bearing on the matter and the transcript of testimony at any investigative hearing conducted by or on behalf of the executive director to the licensee.

(3) Upon receipt of the complaint of the executive director, the commission shall review all matter presented in support thereof and shall appoint a hearing examiner to conduct further proceedings.

(4) After proceedings required by Sections 97-33-301 through 97-33-317, the hearing examiner may recommend that the commission take any or all of the following actions:

(a) As to operations at a licensed gaming establishment under Section 97-33-307(5):

(i) Limit, condition, suspend or revoke the license of any licensed gaming establishment or the individual license of any licensee without affecting the license of the establishment; and

(ii) Order an operator to exclude an individual licensee from the operation of the registered business or not to pay the licensee any remuneration for services or any profits, income or accruals on his investment in the licensed gaming establishment;

(b) Limit, condition, suspend or revoke any license granted to any applicant by the commission;

(c) Fine each licensee for any act or transaction for which commission approval was required or permitted, as provided in Section 97-33-309.

(5) The hearing examiner shall prepare a written decision containing his recommendation to the commission and shall serve it on all parties. Any party disagreeing with the hearing examiner's recommendation may ask the commission to review the recommendation within ten (10) days of service of the recommendation. The commission may hold a hearing to consider the recommendation whether there has been a request to review the recommendation or not.

(6) If the commission decides to review the recommendation, it shall give notice of that fact to all parties within thirty (30) days of the recommendation and shall schedule a hearing to review the recommendation. The commission's review shall be de novo but shall be based upon the evidence presented before the hearing examiner. The commission may remand the case to the hearing examiner for the presentation of additional evidence upon a showing of good cause why the evidence could not have been presented at the previous hearing.

(7) If the commission does not decide to review the recommendation within thirty (30) days, the recommendation becomes the final order of the commission.

(8) If the commission limits, conditions, suspends or revokes any license, or imposes a fine, it shall issue its written order therefor after causing to be prepared and filed the hearing examiner's written decision upon which the order is based.

(9) Any limitation, condition, revocation, suspension or fine is effective until reversed upon judicial review, except that the commission may stay its order pending a rehearing or judicial review upon such terms and conditions as it deems proper.

(10) Judicial review of an order or decision of the commission may be had to the Chancery Court of the First Judicial District of Hinds County, Mississippi, as a case in equity.

(11) A license is automatically revoked if the individual is convicted of a felony in any court of this state, another state, or the United States or if the individual is convicted of a crime in any court of another state or the United States which, if committed in this state, would be a felony. An appeal from the conviction shall not act as a supersedeas to the revocation required by this subsection.

HISTORY: Laws, 2016, ch. 488, § 9; Laws, 2017, ch. 336, § 8, eff from and after July 1, 2017.

Editor's Notes — Laws of 2017, ch. 336, § 12, effective March 13, 2017, provides:

"SECTION 12. Application for licensure as a fantasy contest operator may be made at any time."

Laws of 2017, ch. 336, § 13, provides:

"SECTION 13. Section 12 of this act is not included to be codified and is effective from and after its passage (approved March 13, 2017); the remainder of this act shall take effect and be in force from and after July 1, 2017."

§ 97-33-317. Fees.

(1) For the privilege of conducting fantasy sports contests in Mississippi, licensees shall pay to the Department of Revenue a fee equivalent to eight percent (8%) of the operator's net Mississippi revenue.

(2) "Net Mississippi revenue" means the amount equal to the total of all fantasy contest entry fees that an operator collects from all players, less the total of all sums paid out as cash prizes to all fantasy contest players, multiplied by the location percentage for Mississippi. "Location percentage" means, for each fantasy contest, the percentage of the total entry fees collected from players located in Mississippi, divided by the total entry fees collected by that operator from all players in fantasy contests, rounded to the nearest one-hundredth of a percent (0.01%).

(3)(a) The Commissioner of Revenue shall assess and collect all taxes, fees, interest, penalties, damages and fines imposed by this chapter, and is hereby empowered to promulgate rules and regulations to administer collection of the amounts due. Records or other documents submitted by the licensee, or on behalf of the licensee, to the Mississippi Gaming Commission or executive director shall be made available to the Commissioner of Revenue or his authorized agent upon written request.

(b) The license fees levied by this chapter shall be due quarterly for the periods January through March, April through June, July through September and October through December, and payable on or before the twentieth day of the month next succeeding the month in which the fees accrue. The licensee shall make a return showing the net Mississippi revenue and compute the fee due for the period.

(c) All administrative provisions of the sales tax law, and amendments thereto, including those which provide for collection and administrative appeals procedures, fix damages, penalties and interest for failure to comply with the provisions of said sales tax law, and all other requirements and duties imposed upon any licensee or taxpayer, shall apply to all persons liable for taxes, fees and all other monies imposed under the provisions of this chapter. However, fines or other assessments levied by the Mississippi Gaming Commission or the executive director will not be considered due and payable until thirty (30) days after final determination of the fines or assessments. The Commissioner of Revenue shall exercise all power and authority and perform all duties with respect to licensees or taxpayers under this chapter as are provided in the sales tax law, except where there is conflict, then the provisions of this chapter shall control.

(d) Determination and assessment of taxes, fees, licenses, interest, penalties, damages and fines under this chapter by the Commissioner of Revenue, the Executive Director of the Mississippi Gaming Commission or the Mississippi Gaming Commission shall be prima facie correct.

(e) Fees authorized under this section shall be deposited into the State General Fund as authorized by law.

HISTORY: Laws, 2017, ch. 336, § 9, eff from and after July 1, 2017.

Editor's Notes — Laws of 2017, ch. 336, § 12, effective March 13, 2017, provides:

"SECTION 12. Application for licensure as a fantasy contest operator may be made at any time."

Laws of 2017, ch. 336, § 13, provides:

"SECTION 13. Section 12 of this act is not included to be codified and is effective from and after its passage (approved March 13, 2017); the remainder of this act shall take effect and be in force from and after July 1, 2017."

CHAPTER 35.

CRIMES AGAINST PUBLIC PEACE AND SAFETY

Sec.

97-35-1. Buses; disorderly conduct; use of profane, etc., language; intoxication or smoking on passenger bus.
97-35-3. Repealed.
97-35-5. Disorderly conduct; interference with business, customers, invitees, etc.
97-35-7. Disorderly conduct; failure to comply with requests or commands of law enforcement officers; penalties; exception.
97-35-9. Disturbance by explosions, noises or offensive conduct.
97-35-11. Disturbance by abusive language or indecent exposure; exception.
97-35-13. Disturbance in public place.
97-35-15. Disturbance of the public peace or the peace of others; exception.
97-35-17. Disturbance of worship; proceedings and penalty.
97-35-18. Disturbance by disruptive protest of funeral, burial service, or memorial service.
97-35-19. Hydraulic brake fluid; sale of inferior quality unlawful; standards.
97-35-21. Lighthouse property and navigation lights; destroying, extinguishing, etc.
97-35-23. Obstructing public streets, etc.; intentional obstruction of, or interference with, vehicle or pedestrian.
97-35-25. Obstructing public streets, etc.; wilful obstruction of use by impeding traffic.
97-35-27. Registration of convicted felons residing in state.
97-35-29 through 97-35-35. Repealed.
97-35-37 through 97-35-41. Repealed.
97-35-43. Repealed.
97-35-45. False alarm of fire.
97-35-47. False reporting of crime.
97-35-49. Focusing laser beam at law enforcement officer, fire fighter or other emergency personnel; penalties.
97-35-51. Obstructing access to emergency assistance; penalties.

§ 97-35-1. Buses; disorderly conduct; use of profane, etc., language; intoxication or smoking on passenger bus.

(1) It shall be unlawful for any person to be guilty of disorderly conduct or a breach of the peace or use any obscene, profane or vulgar language, upon any passenger bus or coach while such passenger bus or coach is in the service of passenger transportation upon any of the highways of this state.

(2) It shall be unlawful for any person, while intoxicated, to be in or upon any passenger bus or coach when such passenger bus or coach is engaged in the service of passenger transportation upon any of the highways of this state.

(3) It shall be unlawful for any person to drink intoxicating liquors of any kind in or upon any passenger bus or coach while the said passenger bus or coach is in the service of passenger transportation upon any of the highways of this state.

(4) It shall be unlawful for any person to smoke a cigar or pipe in or upon any passenger bus or coach while said passenger bus or coach is in the service

of passenger transportation upon any of the highways of this state. Before being guilty of a violation of this subsection, the driver of the bus shall have first requested such violator to refrain from smoking.

(5) The provisions of the foregoing subsections shall apply only to passenger buses or coaches engaged in interstate commerce or intrastate commerce operating over regularly scheduled routes within this state under a certificate of public convenience and necessity granted by the interstate commerce commission or the Mississippi Public Service Commission or both.

(6) If any person shall be guilty of violating any of the five (5) preceding subsections, the driver of the bus or person in charge thereof, may stop it at the place where the offense is committed, or at the next regular or convenient stopping place of the bus and eject such passenger, using only such force as may be necessary to accomplish the removal, and the driver of the bus or person in charge thereof, may command the assistance of passengers thereon to assist in the removal, and the driver of the bus may cause any person so violating any of said subsections to be detained and delivered to the proper authorities.

(7) Any person violating any subsection of this section shall be deemed guilty of a misdemeanor, and upon conviction, shall be fined not more than five hundred dollars ($500.00), or imprisoned in the county jail for not exceeding thirty (30) days, in the discretion of the court, or the offender may be punished by both such fine and imprisonment.

HISTORY: Codes, 1942, § 2087.3; Laws, 1964, ch. 238, §§ 1-7, eff from and after passage (approved June 11, 1964).

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

ALR.

Carrier's liability based on serving intoxicants to passenger. 76 A.L.R.3d 1218.

Liability of land carrier to passenger who becomes victim of another passenger's assault. 43 A.L.R.4th 189.

Validity and construction of statute or ordinance specifically criminalizing passenger misconduct on public transportation. 78 A.L.R.4th 1127.

Secondary smoke as battery. 46 A.L.R.5th 813.

Validity, construction, and operation of Federal disorderly conduct regulation (36 C.F.R. § 2.34). 180 A.L.R. Fed. 637.

Am. Jur.

12 Am. Jur. 2d, Breach of Peace and Disorderly Conduct §§ 1 et seq.

5A Am. Jur. Pl & Pr Forms (Rev), Carriers, Forms 46.1, 46.2 (complaint for damages arising out of assault by fellow passenger).

CJS.

11 C.J.S., Breach of the Peace §§ 1 et seq.

27 C.J.S., Disorderly Conduct §§ 1 et seq.

§ 97-35-3. Repealed.

Repealed by Laws, 2009, ch. 369, § 2, effective upon approval (March 17, 2009).

§ 97-35-3. [Codes, 1942, § 2087.5; Laws, 1960, ch. 250, §§ 1, 2; Laws, 2006, ch. 520, § 6, eff from and after passage (approved Apr. 3, 2006.)]

Editor's Notes — Former § 97-35-3 prohibited certain activities as disorderly conduct.

§ 97-35-5. Disorderly conduct; interference with business, customers, invitees, etc.

(1) It shall be unlawful for any person or persons, while in or on the premises of another, whether that of an individual person, or a corporation, or a partnership, or an association, and on which property any store, restaurant, sandwich shop, hotel, motel, lunch counter, bowling alley, moving picture theatre or drive-in theatre, barber shop or beauty parlor, or any other lawful business is operated which engages in selling articles of merchandise or services or accommodation to members of the public, or engages generally in business transactions with members of the public, to:

(a) prevent or seek to prevent, or interfere with, the owner or operator of such place of business, or his agents or employees, serving or selling food and drink, or either, or rendering service or accommodation, or selling to or showing merchandise to, or otherwise pursuing his lawful occupation or business with, customers or prospective customers, or other members of the public who may then be in such building, or

(b) prevent or seek to prevent, or interfere with, or seek to interfere with, other persons, expressly or impliedly invited upon said premises, or prospective customers, coming into or frequenting such premises in the normal course of the operation of the business conducted and carried on upon said premises.

(2) Any person engaging in the unlawful conduct described in subsection (1) shall be guilty of disorderly conduct, a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than five hundred dollars ($500.00), or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment.

(3) The provisions of this section are supplementary to the provisions of any other statute of this state.

HISTORY: Codes, 1942, § 2087.7; Laws, 1960, ch. 260, §§ 1, 2.

Cross References — Right to choose business customers, patrons, or clients, see § 97-23-17.

Failure to comply with request or commands of law enforcement officers, see § 97-35-7.

Intentional or wilful obstruction of public streets, etc., see §§ 97-35-23, 97-35-25.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

Persons arrested for violating ordinances by parading without a permit, in an anti-segregation demonstration, held not entitled to habeas corpus in federal court on ground that mass arrests had so invaded state courts as to deprive them of an adequate remedy under state law. Brown v. Rayfield, 320 F.2d 96, 1963 U.S. App. LEXIS 4762 (5th Cir. Miss.), cert. denied, 375 U.S. 902, 84 S. Ct. 191, 11 L. Ed. 2d 143, 1963 U.S. LEXIS 255 (U.S. 1963).

The constitutionality of this section [Code 1942, § 2087. 7] was challenged in Bailey v. Patterson, 199 F. Supp. 595, in which it was held, in view of the involvement of factual issues, that the federal court would withhold action until the state courts should pass upon the issues; but this decision was vacated in 369 U.S. 31, 7 L. Ed. 2d 512, 82 S. Ct. 549, which, affirming that no state may require racial segregation of interstate or intrastate transportation facilities, held that the claim that the statutes so requiring are not unconstitutional was frivolous, and therefore not one in which a three-judge federal district court is required. The appellants, however, were held to lack standing to enjoin criminal prosecutions under the breach of peace statutes, not having been prosecuted, or threatened with prosecution, under them. Bailey v. Patterson, 369 U.S. 31, 82 S. Ct. 549, 7 L. Ed. 2d 512, 1962 U.S. LEXIS 2162 (U.S. 1962).

RESEARCH REFERENCES

ALR.

Nonlabor picketing or boycott. 93 A.L.R.2d 1284.

Participation of student in demonstration on or near campus as warranting imposition of criminal liability for breach of peace, disorderly conduct, trespass, unlawful assembly, or similar offense. 32 A.L.R.3d 551.

Tavernkeeper's liability to patron for third person's assault. 43 A.L.R.4th 281.

Validity, construction, and operation of statute or regulation forbidding, regulating, or limiting peaceful residential picketing. 113 A.L.R.5th 1.

Validity, construction, and operation of Federal disorderly conduct regulation (36 C.F.R. § 2.34). 180 A.L.R. Fed. 637.

Am. Jur.

12 Am. Jur. 2d, Breach of Peace and Disorderly Conduct §§ 1 et seq.

CJS.

11 C.J.S., Breach of the Peace §§ 1 et seq.

27 C.J.S., Disorderly Conduct §§ 1 et seq.

§ 97-35-7. Disorderly conduct; failure to comply with requests or commands of law enforcement officers; penalties; exception.

(1) Whoever, with intent to provoke a breach of the peace, or under such circumstances as may lead to a breach of the peace, or which may cause or occasion a breach of the peace, fails or refuses to promptly comply with or obey a request, command, or order of a law enforcement officer, having the authority to then and there arrest any person for a violation of the law, to:

(a) Move or absent himself and any vehicle or object subject to his control from the immediate vicinity where the request, command or order is given, or

(b) Arise, if lying or sitting down, and move to a point designated by said officer outside the immediate area of, or which is affected by the occurrences at, the place of issuing such order, command or request, or

(c) Refrain from lying down or sitting down at, or in the immediate vicinity of, the place where said order, request or command is given, or

(d) Refrain from obstructing, with his body or any part thereof, or in any manner, the lawful movement or passage of any vehicle, or

(e) Refrain from placing, or permitting, or cooperating with another to place, his body or any part thereof, in front of or behind any vehicle, in such manner as to interfere with, or prevent its movement or block its path in lawful movement, or

(f) Refrain from chaining or tying or binding himself or another to any object or person, or

(g) Unbind, unchain or loosen himself, or remove himself, from any chain or other means whereby he may be prevented from moving away from the place or the immediate vicinity where he may be when such officer issues said order, request or command, or

(h) Walk or move to, enter and remain in, either or both, as may be directed by such officer, any police or other vehicle operated by any law enforcement officer or department, or any other vehicle designated by such an officer, or

(i) Act or do or refrain from acting or doing as ordered, requested or commanded by said officer to avoid any breach of the peace at or near the place of issuance of such order, request or command, shall be guilty of disorderly conduct, which is made a misdemeanor and, upon conviction thereof, such person or persons shall be punished by a fine of not more than Five Hundred Dollars ($500.00) or imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment.

(2) Any person who causes, or aids, or encourages, or abets another to violate, or in violating, any provision of subsection (1) hereof, shall be guilty of disorderly conduct which is made a misdemeanor and, upon conviction thereof, such person or persons shall be punished by a fine of not more than Five Hundred Dollars ($500.00) or imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment.

(3) If any person alone or in concert with others violates subsection (1) or (2) hereof, or both, under such circumstances or in such a manner as to evince a willful and wanton disregard for the life or safety of another and if as a result thereof another person or persons be injured, maimed or killed, the person or persons so violating subsection (1) or (2) hereof, or both, shall be guilty of a felony and, upon conviction thereof, such person or persons shall be imprisoned in the State Penitentiary not longer than five (5) years or be fined not more than Two Thousand Dollars ($2,000.00), or both such fine and imprisonment.

(4) The act of breast-feeding shall not constitute disorderly conduct.

(5) The provisions of this section are supplementary to the provisions of any other statutes of this state.

HISTORY: Codes, 1942, § 2087.9; Laws, 1964, ch. 336, §§ 1-4; Laws, 2006, ch. 520, § 7, eff from and after passage (approved Apr. 3, 2006).

Cross References — Interference with business, customers, invitees, etc., see § 97-35-5.

Intentional or wilful obstruction of public streets, etc., see §§ 97-35-23, 97-35-25.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Sufficiency of evidence.
3. Fighting words.

1. In general.

Officer had reasonable suspicion to investigate a suspicious white vehicle following a report of a vehicle theft, and then probable cause to detain its occupants for further questioning in light of their failure to respond and resisting arrest. Qualls v. State, 947 So. 2d 365, 2007 Miss. App. LEXIS 21 (Miss. Ct. App. 2007).

Probable cause existed to arrest the defendant for a violation of this section where he was found on a driveway behind a county jail, the driveway was owned by the county and was never dedicated as a public thoroughfare, and defendant was on notice that the area was off-limits because he had previously been forbidden from coming into the area. Bigham v. Huffman, 1999 U.S. Dist. LEXIS 16542 (N.D. Miss. Oct. 9, 1999), aff'd, 218 F.3d 744, 2000 U.S. App. LEXIS 15292 (5th Cir. Miss. 2000).

Disorderly conduct demonstrated by failure to obey the commands or requests of a law enforcement officer is a punishable offense. Merritt v. State, 497 So. 2d 811, 1986 Miss. LEXIS 2729 (Miss. 1986).

2. Sufficiency of evidence.

Evidence was insufficient to support defendant's conviction for disorderly conduct. While there was evidence that defendant continued to curse after a deputy attempted to give him a ticket, there was no evidence that the deputy ever ordered defendant to get back in his vehicle and leave the scene and that defendant refused. Mastin v. State, 180 So. 3d 732, 2015 Miss. App. LEXIS 591 (Miss. Ct. App. 2015).

Youth court did not err in adjudicating defendant juvenile a delinquent child for resisting arrest because the officer's actions in arresting defendant for disorderly conduct were lawful as defendant failed to obey the officer's commands to show his hands or to place his hands on the car under circumstances that could lead to a breach of the peace; and the evidence introduced at the delinquency hearing showed that defendant resisted arrest as he struggled and would not put his arms behind his back, and some of the other officers ultimately tased defendant to gain compliance. S.M.K.S. v. Youth Court of Union County, 155 So. 3d 747, 2015 Miss. LEXIS 39 (Miss. 2015).

Police officer had the authority to arrest a thirteen-year-old juvenile for committing a breach of the peace because the juvenile refused to comply with the officer's reasonable instructions to put the juvenile's hands on a patrol car, when the officer responded to a report that gunshots had been fired in the area from a car that matched the description of the car defendant was standing near. S.M.K.S. v. Youth Court of Union County, 155 So. 3d 876, 2014 Miss. App. LEXIS 2 (Miss. Ct. App. 2014).

Evidence was sufficient to convict defendant of disorderly conduct and the verdict was not against the weight of the evidence because, although instructed by the officer to refrain from using his cell phone for the safety of the officer and others at the scene, defendant continued to use his cell phone. Matthews v. City of Madison, 143 So. 3d 579, 2013 Miss. App. LEXIS 611 (Miss. Ct. App. 2013), aff'd, 143 So. 3d 571, 2014 Miss. LEXIS 373 (Miss. 2014).

In a wrongful death action filed by the parents of two passengers who were killed during a police pursuit of the driver of a stolen vehicle, a city was properly granted summary judgment because the passengers were engaged in criminal activity, as there was no dispute that they knew that the car was stolen and that they encouraged the driver to flee from the police, in violation of Miss. Code Ann. § 97-35-7(2). McCoy v. City of Florence, 949 So. 2d 69, 2006 Miss. App. LEXIS 526 (Miss. Ct. App. 2006), cert. denied, 949 So. 2d 37, 2007 Miss. LEXIS 113 (Miss. 2007).

Evidence that defendant, who was a guest in arrestee's mother's home, refused to allow police to search home to find the arrestee, after officer informed defendant of felony warrant and inquired about arrestee's presence in the home, that defendant denied arrestee's presence and insisted that he was alone in the home, and that arrestee was subsequently found hiding behind insulation in attic was sufficient to support conviction for disorderly conduct. Bovan v. State, 706 So. 2d 254, 1997 Miss. App. LEXIS 599 (Miss. Ct. App. 1997).

Issue of whether exigent circumstances supported ultimate search and arrest of arrestee in home where defendant was a guest was irrelevant to issue of defendant's guilt for disorderly conduct, based on his refusal to allow police to search home. Bovan v. State, 706 So. 2d 254, 1997 Miss. App. LEXIS 599 (Miss. Ct. App. 1997).

3. Fighting words.

Defendant's free speech rights were not violated by his warrantless arrest where the confrontation occurred not out in public but at the sheriff's department, the officer neither initiated nor had an opportunity to walk away from defendant's words and combative conduct, defendant became agitated and began shouting profanities when the officer told him about the protocol he would have to follow to retrieve his vehicle from the impound lot, and defendant did not stop with simply expressing his displeasure. He was combative, and he created a stalemate that arose to the level of "fighting words" that were likely to inflict injury or incite an immediate breach of the peace. Odem v. State, 881 So. 2d 940, 2004 Miss. App. LEXIS 899 (Miss. Ct. App. 2004).

RESEARCH REFERENCES

ALR.

Insulting words addressed directly to police officer as breach of peace or disorderly conduct. 14 A.L.R.4th 1252.

Validity, construction, and operation of Federal disorderly conduct regulation (36 C.F.R. § 2.34). 180 A.L.R. Fed. 637.

Am. Jur.

12 Am. Jur. 2d, Breach of Peace and Disorderly Conduct §§ 1 et seq.

CJS.

11 C.J.S., Breach of the Peace §§ 1 et seq.

27 C.J.S., Disorderly Conduct §§ 1 et seq.

§ 97-35-9. Disturbance by explosions, noises or offensive conduct.

A person who wilfully disturbs the peace of any family or person by an explosion of gunpowder or other explosive substance, or by loud or unusual noise, or by any tumultuous or offensive conduct, shall be punished by fine or imprisonment, or both; the fine not to exceed one hundred dollars, and the imprisonment not to exceed six months in the county jail.

HISTORY: Codes, 1880, § 2769; 1892, § 1032; 1906, § 1111; Hemingway's 1917, § 837; 1930, § 862; 1942, § 2088.

Cross References — Nuisances, see §§ 95-3-1 et seq.

Obscenity, profanity, and drunkenness, see § 97-29-47.
Arrest of person without warrant for violation of this section, see § 99-3-7.

JUDICIAL DECISIONS

1. In general.

This section [Code 1942, § 2088] and Code 1942, § 2089 are intended to protect the peace of families. An affidavit or indictment, averring the disturbance merely of an individual, charges no offense under either section. Brooks v. State, 67 Miss. 577, 7 So. 494, 1890 Miss. LEXIS 108 (Miss. 1890).

What constitutes the offensive conduct, or the nature or character of the offensive conduct, should be stated in the affidavit or indictment. Finch v. State, 64 Miss. 461, 1 So. 630, 1886 Miss. LEXIS 89 (Miss. 1886).

RESEARCH REFERENCES

ALR.

Recovery of damages for emotional distress, fright, and the like, resulting from blasting operations. 75 A.L.R.3d 770.

§ 97-35-11. Disturbance by abusive language or indecent exposure; exception.

Any person who enters the dwelling house of another, or the yard or curtilage thereof, or upon the public highway, or any other place near such premises, and in the presence or hearing of the family or the possessor or occupant thereof, or of any member thereof, makes use of abusive, profane, vulgar or indecent language, or is guilty of any indecent exposure of his or her person at such place, shall be punished for a misdemeanor. The act of breast-feeding shall not constitute indecent exposure.

HISTORY: Codes, 1880, § 2770; 1892, § 1033; 1906, § 1112; Hemingway's 1917, § 838; 1930, § 863; 1942, § 2089; Laws, 1980, ch. 389; Laws, 2006, ch. 520, § 8, eff from and after passage (approved Apr. 3, 2006).

Cross References — Obscenity, profanity, and drunkenness, see § 97-29-47.
Arrest of person without warrant for violation of this section, see § 99-3-7.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Indictment or affidavit charging offense.
3. Proof.

1. In general.

Notwithstanding that a portion of the sentence imposed upon a defendant indicted for violating this section [Code 1942, § 2089] had been suspended, an appeal brought more than six months after judgment was entered on a guilty plea was barred by a statute requiring, with certain exceptions, that an appeal be brought to the supreme court within six months of its rendition. Dickerson v. State, 150 Miss. 823, 117 So. 261, 1928 Miss. LEXIS 176 (Miss. 1928).

2. Indictment or affidavit charging offense.

Setting out language used without use of the word “unlawful” does not charge any offense. Wade v. State, 100 Miss. 802, 57 So. 222, 1911 Miss. LEXIS 77 (Miss. 1911).

Affidavit charging use of profane language in a public place must allege the particular public place. State v. Shanks, 88 Miss. 410, 40 So. 1005, 1906 Miss. LEXIS 151 (Miss. 1906); Files v. State, 96 Miss. 257, 50 So. 979, 1909 Miss. LEXIS 52 (Miss. 1909).

An indictment charging the use of abusive language in the public highway near the premises of another and in the presence of a member of the latter's family, is insufficient. State v. Reed, 76 Miss. 211, 24 So. 308, 1898 Miss. LEXIS 82 (Miss. 1898).

3. Proof.

In a prosecution for disturbing the peace, the trial court erred in failing to give a preemptory instruction of not guilty where the alleged incident took place in the home of the defendant's mother and where the state failed to specifically prove the words used and the things done which constituted the alleged offense. Taylor v. State, 396 So. 2d 39, 1981 Miss. LEXIS 1983 (Miss. 1981).

Indictment for disturbing peace by entering dwelling was supported by proof that defendant came onto front porch of residence. Moree v. State, 152 Miss. 278, 119 So. 202, 1928 Miss. LEXIS 260 (Miss. 1928).

Failure of city to prove the use of loud and boisterous language as charged in affidavit is fatal to conviction. Culpepper v. Meridian, 123 Miss. 527, 86 So. 338, 1920 Miss. LEXIS 52 (Miss. 1920).

Place is material. An indictment charging the use of abusive language in a yard is not sustained by proof of its use near the yard. Quin v. State, 65 Miss. 479, 4 So. 548, 1889 Miss. LEXIS 1 (Miss. 1889).

RESEARCH REFERENCES

ALR.

Validity and construction of statute or ordinance prohibiting use of "obscene" language in public. 2 A.L.R.4th 1331.

Indecent exposure: what is "person". 63 A.L.R.4th 1040.

Validity of State and Municipal Indecent Exposure Statutes and Ordinances. 71 A.L.R.6th 283.

Am. Jur.

12 Am. Jur. 2d, Blasphemy and Profanity §§ 1 et seq.

50 Am. Jur. 2d, Lewdness, Indecency and Obscenity §§ 16 et seq.

CJS.

67 C.J.S., Obscenity § 11.

§ 97-35-13. Disturbance in public place.

Any person who shall enter any public place of business of any kind whatsoever, or upon the premises of such public place of business, or any other public place whatsoever, in the State of Mississippi, and while therein or thereon shall create a disturbance, or a breach of the peace, in any way whatsoever, including, but not restricted to, loud and offensive talk, the making of threats or attempting to intimidate, or any other conduct which causes a disturbance or breach of the peace or threatened breach of the peace, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than five hundred dollars ($500.00) or imprisoned in jail not more than six (6) months, or both such fine and imprisonment.

HISTORY: Codes, 1942, § 2090.5; Laws, 1956, ch. 256.

Cross References — Arrest of person without warrant for violation of this section, see § 99-3-7.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Fighting words.

1. In general.

A county court's enhancement of a defendant's sentence for breach of the peace from $50 to $250 on appeal from the municipal court, was proper since the fine fell within the breach of the peace statute's sentencing guideline and there was no evidence that the enhancement was reflective of judicial vindictiveness. Jones v. Meridian, 552 So. 2d 820, 1989 Miss. LEXIS 422 (Miss. 1989).

The breach of the peace statute, this section, is not unconstitutionally vague. Although the statute may have been constructed with broad language and could arguably be construed in a manner which would reach constitutionally protected speech or conduct, a statute may not be construed "so as to infringe upon the state or federally protected constitutional rights" of any individual. Jones v. Meridian, 552 So. 2d 820, 1989 Miss. LEXIS 422 (Miss. 1989).

2. Fighting words.

Defendant's free speech rights were not violated by his warrantless arrest where the confrontation occurred not out in public but at the sheriff's department, the officer neither initiated nor had an opportunity to walk away from defendant's words and combative conduct, defendant became agitated and began shouting profanities when the officer told him about the protocol he would have to follow to retrieve his vehicle from the impound lot, and defendant did not stop with simply expressing his displeasure. He was combative, and he created a stalemate that rose to the level of "fighting words" that were likely to inflict injury or incite an immediate breach of the peace. Odem v. State, 881 So. 2d 940, 2004 Miss. App. LEXIS 899 (Miss. Ct. App. 2004).

RESEARCH REFERENCES

ALR.

Location of offense as "public" within requirement of enactments against drunkenness. 8 A.L.R.3d 930.

§ 97-35-15. Disturbance of the public peace or the peace of others; exception.

(1) Any person who disturbs the public peace, or the peace of others, by violent, or loud, or insulting, or profane, or indecent, or offensive, or boisterous conduct or language, or by intimidation, or seeking to intimidate any other person or persons, or by conduct either calculated to provoke a breach of the peace, or by conduct which may lead to a breach of the peace, or by any other act, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than Five Hundred Dollars ($500.00) or by imprisonment in the county jail not more than six (6) months, or both.

(2) The act of breast-feeding shall not constitute a breach of the peace.

(3) The provisions of this section are supplementary to the provisions of any other statute of this state.

HISTORY: Codes, 1942, § 2089.5; Laws, 1960, ch. 254, §§ 1, 2; Laws, 2006, ch. 520, § 9, eff from and after passage (approved Apr. 3, 2006).

Cross References — Arrest of person without warrant for violation of this section, see § 99-3-7.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

Peace bonds, see §§ 99-23-1 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. Constitutionality.
2. Construction and application.

1. Constitutionality.

As interpreted by the state courts, this section is not unconstitutional. McLaurin v. Burnley, 279 F. Supp. 220, 1967 U.S. Dist. LEXIS 8049 (N.D. Miss. 1967), aff'd, 401 F.2d 773, 1968 U.S. App. LEXIS 5255 (5th Cir. Miss. 1968).

Although this section [Code 1942, § 2089.5] as drawn is in broad terms, it is not unconstitutional upon its face, and it may not be so construed as to infringe upon the state or federally protected constitutional rights of any person. McLaurin v. Greenville, 187 So. 2d 854, 1966 Miss. LEXIS 1361 (Miss. 1966), cert. denied, 385 U.S. 1011, 87 S. Ct. 704, 17 L. Ed. 2d 548, 1967 U.S. LEXIS 2662 (U.S. 1967); McLaurin v. Greenville, 187 So. 2d 860, 1966 Miss. LEXIS 1362 (Miss. 1966), cert. denied, 385 U.S. 1011, 87 S. Ct. 704, 17 L. Ed. 2d 548, 1967 U.S. LEXIS 2662 (U.S. 1967); Cobb v. Greenville, 187 So. 2d 861, 1966 Miss. LEXIS 1364 (Miss. 1966).

The constitutionality of this section [Code 1942, § 2089. 5] was challenged in Bailey v. Patterson, 199 F Supp 595, in which it was held, in view of the involvement of factual issues, that the federal court would withhold action until the state courts should pass upon the issues; but this decision was vacated in 369 U.S. 31, 7 L. Ed. 2d 512, 82 S. Ct. 549, which, affirming that no state may require racial segregation of interstate or intrastate transportation facilities, held that the claim that the statutes so requiring are not unconstitutional was frivolous, and therefore not one in which a three-judge Federal district court is required. The appellants, however, were held to lack standing to enjoin criminal prosecutions under the breach of peace statutes, not having been prosecuted, or threatened with prosecution, under them. Bailey v. Patterson, 199 F. Supp. 595 (S.D. Miss. 1961), vacated, 369 U.S. 31, 82 S. Ct. 549, 7 L. Ed. 2d 512 (1962)'.

2. Construction and application.

When defendant was stopped for speeding and then stopped again after a derogatory reference to an officer, the second stop was illegal, and disturbing the peace, resisting arrest, disorderly conduct, and public profanity charges should have been dismissed because (1) the first stop had ended before defendant's disturbing the peace arrest, (2) the arrest was based on the derogatory reference, and (3) the arrest was illegal, as defendant did not commit disturbing the peace or the other offenses aside from speeding, since defendant did not disturb the public peace or the peace of others, as only defendant and the officer were present, the officer did not consider the insult as fighting words, and the other offenses arose after the arrest. Collins v. State, 223 So. 3d 817, 2017 Miss. App. LEXIS 381 (Miss. Ct. App. 2017).

Trial judge did not err by granting a directed verdict on plaintiff's claim of malicious prosecution because, although the charge for disturbing the peace was eventually dropped, there was probable cause for plaintiff's arrest at the time it was initiated as casino employees asked plaintiff to leave the premises, and he pointedly refused; and the casino employees had probable cause to believe that plaintiff's conduct might lead to a breach of the peace. Lee v. MGM Resorts Miss., Inc., 200 So. 3d 1129, 2016 Miss. App. LEXIS 57 (Miss. Ct. App.), cert. denied, 203 So. 3d 598, 2016 Miss. LEXIS 401 (Miss. 2016).

Grant of summary judgment in favor of the employer and against the employees was appropriate in part because, even if it was found that the supervisor had violated Miss. Code Ann. § 97-35-15 or Miss.

Code Ann. § 97-35-3 [Repealed], the issue failed to rise to the necessary level to fit into the exceptions to the employment-at-will doctrine; there was no evidence that the supervisor's conduct was reported because it was illegal. Jones v. Fluor Daniel Servs. Corp., 959 So. 2d 1044, 2007 Miss. LEXIS 366 (Miss. 2007).

Where the victim was shot by her estranged husband after an arrest warrant was issued, but never delivered to the sheriff's department, there was ample probable cause to arrest through Miss. Code Ann. § 99-3-7(3), based upon Miss. Code Ann. § 97-35-15. However, reckless disregard required that the person knowingly or intentionally commit a wrongful act and even viewing the facts in a light most favorable to the victim, the victim showed no evidence that the sheriff's department knew that it could and/or was required to arrest the victim's estranged husband; the sheriff's department's conduct, even if negligent, could not be said to have risen to the level of reckless disregard, and therefore, Miss. Code Ann. § 11-46-9(c) did provide immunity based upon the sheriff's department's conduct, and summary judgment was proper as to the sheriff's department. Collins v. Tallahatchie County, 876 So. 2d 284, 2004 Miss. LEXIS 798 (Miss. 2004).

In a prosecution for disturbing the peace, the trial court erred in failing to give a preemptory instruction of not guilty where the alleged incident took place in the home of the defendant's mother and where the state failed to specifically prove the words used and the things done which constituted the alleged offense. Taylor v. State, 396 So. 2d 39, 1981 Miss. LEXIS 1983 (Miss. 1981).

In view of the provisions of Code 1942, § 7185-03, the youth court does not have jurisdiction of a minor charged with disturbing the peace in violation of Code 1942, § 2089.5. Boatright v. Yalobusha County Youth Court, 223 So. 2d 303, 1969 Miss. LEXIS 1269 (Miss. 1969).

Although Mississippi has required by statute that the complaining witness' testimony be corroborated in prosecutions for certain sexual offenses (e.g. Code 1942, §§ 2359, 2374), the state courts have specifically held that the requirement for corroboration is confined to those offenses wherein the statute expressly so provides, and no such corroboration is required in prosecution of defendant for disturbing the peace of the complaining witness, on allegations that the defendant had touched complainant's private parts. Henry v. Williams, 299 F. Supp. 36, 1969 U.S. Dist. LEXIS 8507 (N.D. Miss. 1969).

This section [Code 1942, § 2089.5] evinces a legislative judgment that speech which is either calculated to lead to a breach of the peace or which may lead to a breach of the peace should be regulated. McLaurin v. Burnley, 279 F. Supp. 220, 1967 U.S. Dist. LEXIS 8049 (N.D. Miss. 1967), aff'd, 401 F.2d 773, 1968 U.S. App. LEXIS 5255 (5th Cir. Miss. 1968).

This section [Code 1942, § 2089.5], as interpreted by the Supreme Court of Mississippi, permits a conviction for speech only if that speech was calculated to lead to a breach of the peace or was of such a nature as ultimately led to a breach of the peace, and there can be no conviction under this section for peaceably exercising the right of free speech. McLaurin v. Burnley, 279 F. Supp. 220, 1967 U.S. Dist. LEXIS 8049 (N.D. Miss. 1967), aff'd, 401 F.2d 773, 1968 U.S. App. LEXIS 5255 (5th Cir. Miss. 1968).

In a prosecution for disturbing the peace, the trial court erred in failing to give a preemptory instruction of not guilty where the alleged incident took place in the home of the defendant's mother and where the state failed to specifically prove the words used and the things done which constituted the alleged offense. Taylor v. State, 396 So. 2d 39, 1981 Miss. LEXIS 1983 (Miss. 1981).

In view of the provisions of Code 1942, § 7185-03, the youth court does not have jurisdiction of a minor charged with disturbing the peace in violation of Code 1942, § 2089.5. Boatright v. Yalobusha County Youth Court, 223 So. 2d 303, 1969 Miss. LEXIS 1269 (Miss. 1969).

This section [Code 1942, § 2089.5] clearly prohibits any loud, violent, or boisterous conduct which may disturb or lead to disturbances of the public peace, and where the evidence showed that the conduct of the defendants violated the provisions of the section and that disturbances occurred as a consequence, injunctive relief against the prosecution and incarceration of the defendants must be denied. United States v. Leflore County, 371 F.2d 368, 1967 U.S. App. LEXIS 7930 (5th Cir. Miss. 1967).

By instructing the jury that if the defendant was arrested for public protest against racial segregation he could not be found guilty, the instruction constituted recognition that this section [Code 1942, § 2089.5] could not be applied to restrict defendant's constitutional right so to protest, and that it could not be used to infringe upon the constitutional right of any person to speak freely within the framework of the law. McLaurin v. Greenville, 187 So. 2d 854, 1966 Miss. LEXIS 1361 (Miss. 1966), cert. denied, 385 U.S. 1011, 87 S. Ct. 704, 17 L. Ed. 2d 548, 1967 U.S. LEXIS 2662 (U.S. 1967); Cobb v. Greenville, 187 So. 2d 861, 1966 Miss. LEXIS 1364 (Miss. 1966).

A narrow and specific construction of this section [Code 1942, § 2089.5] limiting it to situations where, as applied to persons exercising a guaranteed constitutional right in a peaceful manner, they refuse to obey a police order to move on if, but only if, there is a clear and present danger of riot, or other threat to public safety, peace, or order, is untenable in view of the decisions of the United States Supreme Court. Bolton v. Greenville, 253 Miss. 656, 178 So. 2d 667, 1965 Miss. LEXIS 1026 (Miss. 1965).

The constitutional rights of a defendant, legally present in a public place, and neither committing nor threatening a breach of the peace, cannot be denied because of hostility, for some unknown reason, on the part of a group of white citizens. Bolton v. Greenville, 253 Miss. 656, 178 So. 2d 667, 1965 Miss. LEXIS 1026 (Miss. 1965).

In a prosecution for disturbing the peace on public school grounds, there was prejudicial error, requiring reversal, where the school principal was permitted to testify, over objection, that the accused had been dishonorably discharged from the Air Force, that the accused had told the principal that the accused had been expelled from another school for stealing, and that accused had had fights with other students. Willis v. State, 250 Miss. 334, 165 So. 2d 154, 1964 Miss. LEXIS 466 (Miss. 1964).

RESEARCH REFERENCES

ALR.

Validity and construction of statute or ordinance prohibiting use of "obscene" language in public. 2 A.L.R.4th 1331.

Am. Jur.

12 Am. Jur. 2d, Breach of Peace and Disorderly Conduct §§ 1 et seq.

CJS.

11 C.J.S., Breach of the Peace §§ 1 et seq.

27 C.J.S., Disorderly Conduct §§ 1 et seq.

§ 97-35-17. Disturbance of worship; proceedings and penalty.

If any person shall wilfully disturb any congregation of persons lawfully assembled for religious worship, he may be immediately arrested by any officer or private person, without warrant, and taken before any justice court judge of the county, present or convenient, and on conviction thereof by such justice, municipal, county or circuit court, shall be fined not more than Five Hundred Dollars ($500.00) or imprisoned not more than six (6) months, or both.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 4(3); 1857, ch. 64, art. 71; 1871, § 2713; 1880, § 2767; 1892, § 1034; 1906, § 1113; Hemingway's 1917, § 839; 1930, § 864; 1942, § 2090; Laws, 1998, ch. 432, § 1, eff from and after July 1, 1998.

Cross References — Nuisances, see §§ 95-3-1 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Indictment.

1. In general.

Criminal statute prohibiting disorderly conduct by failing or refusing to promptly reply with or obey request or order of law enforcement officer was not unconstitutionally vague under due process clause as applied to arcade owner who carried baseball bat toward small crowd in his parking lot; regardless of whether owner was cursing or threatening officer, presence of baseball bat greatly enhanced possibility of grievous injury to police officers or others if disturbance escalated, case concerned officer's right to control conduct greatly increasing potential for sudden violence, and statute provided adequate notice that failure to obey order under the circumstances could result in arrest. Smith v. City of Picayune, 701 So. 2d 1101, 1997 Miss. LEXIS 379 (Miss. 1997).

Abusive and obscene language addressed to deacon of church while in act of taking up collection just outside of church would constitute disturbance of member of congregation. Stovall v. State, 173 Miss. 755, 163 So. 504, 1935 Miss. LEXIS 264 (Miss. 1935).

Disturbance of single member of congregation assembled for religious worship is in contemplation of law disturbance of congregation. Stovall v. State, 173 Miss. 755, 163 So. 504, 1935 Miss. LEXIS 264 (Miss. 1935).

In prosecution for obstructing justice by assisting in escape of one being arrested for disturbance of church congregation, whether party who escaped was creating disturbance which warranted his arrest and thus made assisting his escape an obstruction to justice held for jury. Stovall v. State, 173 Miss. 755, 163 So. 504, 1935 Miss. LEXIS 264 (Miss. 1935).

In prosecution for obstructing justice, whether accused assisted party who was allegedly creating disturbance to escape from officer making arrest held for jury. Stovall v. State, 173 Miss. 755, 163 So. 504, 1935 Miss. LEXIS 264 (Miss. 1935).

2. Indictment.

Indictment charging accused unlawfully and wilfully disturbed "a congregation of persons lawfully assembled at Prospect Church for religious worship, by then and there talking in a loud tone of voice in the presence and hearing of said congregation," held sufficient. State v. Sowell, 102 Miss. 599, 59 So. 848 (Miss. 1912).

Indictment is defective fatally if it fail to state the nature or character of the disturbance. Conerly v. State, 66 Miss. 96, 5 So. 625, 1888 Miss. LEXIS 66 (Miss. 1888).

§ 97-35-18. Disturbance by disruptive protest of funeral, burial service, or memorial service.

(1) For purposes of this section, the following terms shall have the following meanings:

(a) "Funeral ceremony" means a service or rite commemorating the deceased with the body present.

(b) "Funeral service" means any services which may be used to:

(i) Care for and prepare dead human bodies for burial, cremation or other final disposition; and

(ii) Arrange, supervise, or conduct the funeral ceremony or the final disposition of dead human bodies.

(c) "Graveside service" means a service or rite, conducted at the place of interment, commemorating the deceased with the body present.

(d) "Memorial service" means a ceremony or rite commemorating the deceased without the body present.

(e) "Targeted residential picketing" includes the following acts when committed on more than one (1) occasion:

(i) Marching, standing or patrolling by one or more persons directed solely at a particular residential building in a manner that adversely affects the safety, security or privacy of an occupant of the building; or

(ii) Marching, standing or patrolling by one or more persons which prevents an occupant of a residential building from gaining access to or exiting from the property on which the residential building is located.

(2)(a) Whoever does any of the following shall be guilty of a misdemeanor:

(i) With intent to disrupt a funeral service, graveside service, memorial service, or funeral ceremony, protests or pickets within 1,000 feet of the location or locations at which the service or ceremony is being conducted within one (1) hour before, during, and one (1) hour following the service or ceremony;

(ii) With intent to disrupt a funeral procession impedes vehicles that are part of the funeral procession;

(iii) Intentionally blocks access to a funeral service, funeral ceremony, graveside service or memorial service; or

(iv) Engages in targeted residential picketing at the home or domicile of any surviving member of the deceased person's immediate family on the date of the service or ceremony, and upon conviction thereof, shall be punished by a fine of not more than Five Hundred Dollars ($500.00), or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment.

(b) Whoever is convicted of a second or subsequent violation of paragraph (a) shall be guilty of a gross misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than One Thousand Dollars ($1,000.00), or by imprisonment in the county jail for not more than one (1) year, or by both such fine and imprisonment. For purposes of this paragraph, a second or subsequent violation includes a violation of a statute from another state in conformity with this statute.

(3) In addition to the criminal penalties provided in subsection (2) of this section, the court may enjoin conduct prohibited in subsection (2) of this section, and may in such proceeding award damages, including attorney fees or other appropriate relief against a person, if there is credible evidence that the person has violated, or is likely to violate, subsection (2) of this section. Any surviving member of the deceased person's immediate family who is damaged or threatened with loss or injury by reason of a violation described in subsection (2) of this section is entitled to sue for and have injunctive relief and appropriate remedial compensation in any court of competent jurisdiction against any damage or threatened loss or injury by reason of a violation thereof.

HISTORY: Laws, 2006, ch. 591, § 1, eff from and after July 1, 2006.

Editor's Notes — Laws of 2006, ch. 591, § 3 provides as follows:
"SECTION 3. Section 1 of this act shall be codified within Chapter 35, Title 97, Mississippi Code of 1972."

§ 97-35-19. Hydraulic brake fluid; sale of inferior quality unlawful; standards.

(1) It is the public policy of this state to prohibit the sale of inferior and dangerous qualities and grades of hydraulic brake fluid and only such hydraulic brake fluid which meets the minimum standard of the society of automotive engineers can be lawfully sold or offered for sale in this state. Containers which contain heavy duty hydraulic brake fluid which meets the minimum standards of the society of automotive engineers shall bear the stamp or mark "SAE 70R1," or a later SAE designator, stamp or mark may be used, if the same is assigned to the hydraulic brake fluid on the basis of its being an improved product. Any brands or types of such hydraulic brake fluid being offered for sale in this state after January 1, 1957, which do not bear such a mark or stamp on the label of the container in which they are offered for sale, or meet such minimum standards, shall be impounded, taken up, taken off the market and returned to the seller or manufacturer.

(2) It shall be unlawful for any person to sell or offer for sale, any type or brand of hydraulic brake fluid which does not meet the minimum standards of the society of automotive engineers or the container of which does not bear the stamp or mark "SAE 70R1" or a later designator for an improved product, and it shall be unlawful for any person to mark any container of hydraulic brake fluid with the minimum standard number mentioned herein if the container does not in fact contain fluid which meets such minimum standards, or to offer for sale any such fluid which has been improperly marked. The State Chemist is hereby vested with all the rights, powers and duties necessary to administer this section and to adopt and promulgate reasonable rules and regulations for its accomplishment. Any person violating the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than Ten Dollars ($10.00), nor more than Twenty-five Dollars ($25.00), for each violation, and each sale of such unlawful hydraulic brake fluid shall constitute a separate offense and violation of this section.

HISTORY: Codes, 1942, § 2233.5; Laws, 1956, ch. 244, §§ 1, 2; Laws, 1958, ch. 189, eff. January 1, 1959; Laws, 1986, ch. 395, § 28, eff from and after July 1, 1986.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 97-35-21. Lighthouse property and navigation lights; destroying, extinguishing, etc.

Every person who shall wilfully break into, deface or destroy any lighthouse station, post, platform, steps, lamp or other structure pertaining to such lighthouse station, or shall extinguish any light erected by the United States upon or along the navigable waters of this state to aid in the navigation thereof, shall, upon conviction, be adjudged guilty of a misdemeanor and punished by imprisonment in the county jail not exceeding one year, or by a fine not exceeding one hundred dollars, or by both such fine and imprisonment.

HISTORY: Codes, 1906, § 1395; Hemingway's 1917, § 1138; 1930, § 1169; 1942, § 2412; Laws, 1894, ch. 41.

Cross References — Statutory definition of term "navigable waters," see § 1-3-31.
Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 97-35-23. Obstructing public streets, etc.; intentional obstruction of, or interference with, vehicle or pedestrian.

(1) It shall be unlawful for any person or persons to intentionally obstruct, or interfere with the normal or ordinary free use and passage of vehicles of or on, any public street or highway provided for use by vehicular traffic, or for any person or persons to intentionally obstruct, or interfere with the normal or ordinary free use and passage of pedestrians of or on any public sidewalk provided for foot travel by pedestrians, and any person or persons who so do shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than four hundred dollars ($400.00), or by imprisonment in the county jail for not more than four (4) months, or by both such fine and imprisonment.

(2) The provisions of this section are supplementary to the provisions of any other statute of this state.

HISTORY: Codes, 1942, § 2296.6; Laws, 1960, ch. 253, §§ 1, 2.

Cross References — Picketing interfering with ingress or egress to and from public buildings, etc., see § 97-7-63.
Picketing or demonstrating in or near courthouse or residence of judge, etc., see § 97-9-67.
Obstruction of highways, generally, see § 97-15-37.
Disorderly conduct and breach of the peace, see §§ 97-35-5 through 97-35-7.
Wilful obstruction of, or interference with, use or passage of public streets, see § 97-35-25.
Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

ALR.
Validity, construction, and operation of statute or regulation forbidding, regulating, or limiting peaceful residential picketing. 113 A.L.R.5th 1.

§ 97-35-25. Obstructing public streets, etc.; wilful obstruction of use by impeding traffic.

(1) It shall be unlawful for any person or persons to wilfully obstruct the free, convenient and normal use of any public sidewalk, street, highway, alley, road, or other passageway by impeding, hindering, stifling, retarding or restraining traffic or passage thereon, and any person or persons violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than five hundred dollars ($500.00) or by confinement in the county jail not exceeding six (6) months, or by both such fine and imprisonment.

(2) The provisions of this section are supplementary to the provisions of any other statute of this state.

HISTORY: Codes, 1942, § 2296.5; Laws, 1960, ch. 244, §§ 1, 2.

Cross References — Picketing interfering with ingress or egress to and from public buildings, etc., see § 97-7-63.

Picketing or demonstrating in or near courthouse or residence of judge, etc., see § 97-9-67.

Obstruction of highways, generally, see § 97-15-37.

Disorderly conduct and breach of the peace, see §§ 97-35-5 through 97-35-7.

Intentional obstruction of, or interference with, use or passage of public streets, see § 97-35-23.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 97-35-27. Registration of convicted felons residing in state.

(1) Any person who has been since January 1, 1960 or is hereafter convicted in any other state of any offense which, if committed or attempted in this state, would have been punishable as a felony, shall within thirty (30) days after June 1, 1962, or within thirty (30) days of his coming into any county or city, or city and county in which he resides or is temporarily domiciled for such length of time, register with the chief of police of the city in which he resides or the sheriff of the county if he resides in an unincorporated area.

(2) Such registration shall consist of (a) a statement in writing signed by such person, giving such information as may be required by the identification bureau of the Mississippi Highway Safety Patrol, and (b) the fingerprints and photograph of such person. Within three (3) days thereafter the registering law enforcement agency shall forward such statement, fingerprints and photograph to the identification bureau of the Mississippi Highway Safety Patrol.

(3) If any person required to register hereunder changes his residence address he shall inform, in writing within ten (10) days, the law enforcement agency with whom he last registered of his new address. The law enforcement agency shall, within three (3) days after receipt of such information, forward it to the identification bureau of the Mississippi Highway Safety Patrol. The identification bureau of the Mississippi Highway Safety Patrol shall forward appropriate registration data to the law enforcement agency having local jurisdiction of the new place of residence.

(4) Any person required to register under the provisions of this section who shall violate any of the provisions thereof is guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding three (3) months, or by fine not exceeding one hundred dollars ($100.00), or both.

(5) The statements, photographs and fingerprints herein required shall not be open to inspection by the public or by any person other than a regularly employed peace or other law enforcement officer.

HISTORY: Codes, 1942, § 2563.7; Laws, 1962, ch. 325, §§ 1-5, eff from and after passage (approved June 1, 1962).

Cross References — Sheriffs, see §§ 19-25-1 et seq.

Highway safety patrol, see §§ 45-3-1 et seq.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

RESEARCH REFERENCES

ALR.

State statutes or ordinances requiring persons previously convicted of crime to register with authorities. 36 A.L.R.5th 161.

§§ 97-35-29 through 97-35-35. Repealed.

Repealed by Laws, 2018, ch. 333, § 1, eff from and after July 1, 2018.

§ 97-35-29. [Codes, 1880, § 2960; 1892, § 1309; 1906, § 1383; Hemingway's 1917, § 1126; 1930, § 1156; 1942, § 2393.]

§ 97-35-31. [Codes, 1880, § 2962; 1892, § 1311; 1906, § 1385; Hemingway's 1917, § 1128; 1930, § 1158; 1942, § 2395.]

§ 97-35-33. [Codes, 1880, § 2961; 1892, § 1310; 1906, § 1384; Hemingway's 1917, § 1127; 1930, § 1157; 1942, § 2394.]

§ 97-35-35. [Codes, 1880, § 2964; 1892, § 1312; 1906, § 1386; Hemingway's 1917, § 1129; 1930, § 1159; 1942, § 2396.]

Editor's Notes — Former § 97-35-29 defined "tramps."

Former § 97-35-31 authorized any person to arrest a tramp.

Former § 97-35-33 provided the punishment for conviction of being a tramp.

Former § 97-35-35 provided the penalty for a tramp not leaving a house, yard, etc. on request, carrying weapons or threatening injury.

§§ 97-35-37 through 97-35-41. Repealed.

Repealed by Laws, 2018, ch. 333, § 2, eff from and after July 1, 2018.

§ 97-35-37. [Codes, 1906, § 5055; Hemingway's 1917, § 3332; 1930, § 3472; 1942, § 2666; Laws, 1904, ch. 144.]

§ 97-35-39. [Codes, 1906, § 5058; Hemingway's 1917, § 3335; 1930, § 3475; 1942, § 2669.]

§ 97-35-41. [Codes, 1906, § 5061; Hemingway's 1917, § 3338; 1930, § 3478; 1942, § 2672.]

Editor's Notes — Former § 97-35-37 defined "vagrants."

Former § 97-35-39 provided the penalty for vagrancy.
Former § 37-35-41 provided the penalty for a second offense of vagrancy.

§ 97-35-43. Repealed.

Repealed by Laws, 2018, ch. 333, § 1, eff from and after July 1, 2018.

§ 97-35-43. [Codes, 1906, § 5062; Hemingway's 1917, § 3339; 1930, § 3479; 1942, § 2673.]

Editor's Notes — Former § 97-35-43 provided the penalty for officers named in former § 99-29-1 who fail to perform their duties as to vagrants.

§ 97-35-45. False alarm of fire.

It shall be unlawful for any person to report a fire to another by any means, knowing that such report is false. Any violation of this section shall be punishable by imprisonment in the county jail not to exceed one (1) year or by fine not to exceed five hundred dollars ($500.00), or both.

HISTORY: Laws, 1978, ch. 505, § 1, eff from and after July 1, 1978.

RESEARCH REFERENCES

ALR.

Giving false alarm by telephone as minor criminal offense. 97 A.L.R.2d 510.

§ 97-35-47. False reporting of crime.

It shall be unlawful for any person to report a crime or any element of a crime, including an allegation of child abuse or neglect, to any law enforcement agency or officer, the Department of Child Protection Services, or any officer of any court, by any means, knowing that the report is false. A violation of this section shall be punishable by imprisonment in the county jail not to exceed one (1) year or by fine not to exceed Five Thousand Dollars ($5,000.00), or both. In addition to any fine and imprisonment, and upon proper showing made to the court, the defendant shall be ordered to pay as restitution to the law enforcement agency reimbursement for any reasonable costs directly related to the investigation of the falsely reported crime and the prosecution of any person convicted under this section.

A report is false under this section when it is unsupported by any credible evidence and the person intentionally submitted the report knowing it was false.

HISTORY: Laws, 2000, ch. 387, § 1; Laws, 2012, ch. 518, § 1, eff from and after July 1, 2012; Laws, 2019, ch. 464, § 16, eff from and after July 1, 2019; Laws, 2019, ch. 473, § 1, eff from and after July 1, 2019.

Joint Legislative Committee Notes — Section 16 of Chapter 464, Laws of 2019, effective July 1, 2019, (approved at 10:02 a.m. on April 16, 2019), amended this section. Section 1 of Chapter 473, Laws of 2019, effective July 1, 2019 (approved at 10:20 a.m.

on April 16, 2019), made the same changes to this section. As set out above, this section reflects the language of Section 1 of Chapter 473, Laws of 2019, pursuant to Section 1-3-79, which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective date and the approval date of the amendments are the same, the amendment with the latest approval time supersedes all other amendments to the same section approved on an earlier date and time.

Editor's Notes — Chapter 518, Laws of 2012, which amended this section and enacted § 99-43-8, is known as the Broderick Rashad Danti Dixon Act.

Amendment Notes — The first 2019 amendment (ch. 464) made the same changes as § 1 of Chapter 473, Laws of 2019, and inserted "including an allegation of child abuse or neglect" and "agency or officer, the Department of Child Protection Services" in the first paragraph; added the second paragraph; and made a minor stylistic change.

The second 2019 amendment (ch. 473) made the same changes as § 16 of Chapter 464, Laws of 2019, and inserted "including an allegation of child abuse or neglect" and "agency or officer, the Department of Child Protection Services" in the first paragraph; added the second paragraph; and made a minor stylistic change.

§ 97-35-49. Focusing laser beam at law enforcement officer, fire fighter or other emergency personnel; penalties.

(1) It shall be unlawful for a person intentionally and without legal justification to focus, point or aim a laser beam directly or indirectly at a law enforcement officer, fire fighter or any emergency personnel who is in uniform and engaged in the performance of official duty in such a manner as to harass, annoy or injure such law enforcement officer, fire fighter or emergency personnel.

(2) A person who violates this section shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than One Thousand Dollars ($1,000.00).

HISTORY: Laws, 2003, ch. 537, § 2, eff from and after passage (approved Apr. 21, 2003).

Editor's Notes — Laws of 2003, ch. 537, § 2, provides as follows:

"SECTION 2. This act shall be known and may be cited as the Gary Funchess Act."

§ 97-35-51. Obstructing access to emergency assistance; penalties.

Any person who verbally or physically obstructs, prevents, or hinders another person from seeking or receiving emergency medical assistance, emergency assistance from a third party, or emergency assistance from law enforcement or other emergency personnel, with the intent to cause or allow physical harm or injury to that person is guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine not to exceed One Thousand Dollars ($1,000.00) or imprisonment not to exceed six (6) months, or both.

HISTORY: Laws, 2011, ch. 306, § 1, eff from and after July 1, 2011.

CHAPTER 37.

WEAPONS AND EXPLOSIVES

General Provisions. 97-37-1
Honesty in Purchasing Firearms Act. 97-37-101

GENERAL PROVISIONS

Sec.	
97-37-1.	Deadly weapons; carrying while concealed; use or attempt to use; penalties; "concealed" defined.
97-37-3.	Deadly weapons; forfeiture of weapon; return upon dismissal or acquittal; confiscated firearms may be sold at auction; proceeds of sale used to purchase bulletproof vests for seizing law enforcement agency.
97-37-5.	Unlawful for convicted felon to possess any firearms, or other weapons or devices; penalties; exceptions.
97-37-7.	Deadly weapons; persons permitted to carry weapons; bond; permit to carry weapon; grounds for denying application for permit; required weapons training course; reciprocal agreements.
97-37-9.	Deadly weapons; defenses against indictment for carrying deadly weapon.
97-37-11.	Repealed.
97-37-13.	Deadly weapons; weapons and cartridges not to be given to minor or intoxicated person.
97-37-14.	Possession of handgun by minor; act of delinquency; exceptions.
97-37-15.	Parent or guardian not to permit minor son to have or carry weapon; penalty.
97-37-17.	Possession of weapons by students; aiding or encouraging.
97-37-19.	Deadly weapons; exhibiting in threatening manner.
97-37-21.	Explosives and weapons of mass destruction; false report of placing.
97-37-23.	Unlawful possession of explosives; duty of officers to make search and to seize explosives; exception to prohibition.
97-37-25.	Explosives and weapons of mass destruction; unlawful use.
97-37-27.	Fireworks; unlawful to explode in certain places.
97-37-29.	Shooting into dwelling house.
97-37-30.	Willful discharge of a firearm toward the dwelling of another causing damage to property or domesticated animal or livestock.
97-37-31.	Silencers on firearms; manufacture, sale, possession or use unlawful.
97-37-33.	Toy pistols; sale of pistol or cartridges prohibited; cap pistols excepted.
97-37-35.	Stolen firearms; possession, receipt, acquisition or disposal; offense; punishment.
97-37-37.	Enhanced penalty for use of firearm during commission of felony.

§ 97-37-1. Deadly weapons; carrying while concealed; use or attempt to use; penalties; "concealed" defined.

(1) Except as otherwise provided in Section 45-9-101, any person who carries, concealed on or about one's person, any bowie knife, dirk knife, butcher knife, switchblade knife, metallic knuckles, blackjack, slingshot, pistol, revolver, or any rifle with a barrel of less than sixteen (16) inches in length, or any shotgun with a barrel of less than eighteen (18) inches in length, machine

gun or any fully automatic firearm or deadly weapon, or any muffler or silencer for any firearm, whether or not it is accompanied by a firearm, or uses or attempts to use against another person any imitation firearm, shall, upon conviction, be punished as follows:

(a) By a fine of not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00), or by imprisonment in the county jail for not more than six (6) months, or both, in the discretion of the court, for the first conviction under this section.

(b) By a fine of not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00), and imprisonment in the county jail for not less than thirty (30) days nor more than six (6) months, for the second conviction under this section.

(c) By confinement in the custody of the Department of Corrections for not less than one (1) year nor more than five (5) years, for the third or subsequent conviction under this section.

(d) By confinement in the custody of the Department of Corrections for not less than one (1) year nor more than ten (10) years for any person previously convicted of any felony who is convicted under this section.

(2) It shall not be a violation of this section for any person over the age of eighteen (18) years to carry a firearm or deadly weapon concealed within the confines of his own home or his place of business, or any real property associated with his home or business or within any motor vehicle.

(3) It shall not be a violation of this section for any person to carry a firearm or deadly weapon concealed if the possessor of the weapon is then engaged in a legitimate weapon-related sports activity or is going to or returning from such activity. For purposes of this subsection, "legitimate weapon-related sports activity" means hunting, fishing, target shooting or any other legal activity which normally involves the use of a firearm or other weapon.

(4) For the purposes of this section, "concealed" means hidden or obscured from common observation and shall not include any weapon listed in subsection (1) of this section, including, but not limited to, a loaded or unloaded pistol carried upon the person in a sheath, belt holster or shoulder holster that is wholly or partially visible, or carried upon the person in a scabbard or case for carrying the weapon that is wholly or partially visible.

HISTORY: Codes, 1880, § 2985; 1892, § 1026; 1906, § 1103; Hemingway's 1917, § 829; 1930, § 853; 1942, § 2079; Laws, 1898, p. 86; Laws, 1960, ch. 242, § 1; Laws, 1962, ch. 310, § 1; Laws, 1991, ch. 609, § 4; Laws, 2007, ch. 530, § 1; Laws, 2013, ch. 308, § 1, eff from and after July 1, 2013.

Cross References — Constitutional provision empowering legislature to regulate or forbid carrying concealed weapons, see Miss. Const. Art. 3, § 12.

Prohibition and punishment for furnishing weapons to offenders or taking such item on property occupied by them, see §§ 47-5-191 through 47-5-195.

Murder perpetrated on educational property, see § 97-3-19.

Other sections derived from same 1942 code section, see §§ 97-37-3, 97-37-5, 97-37-7.

Persons who may be permitted to carry weapons, see § 97-37-7.

Defenses to charge of carrying deadly weapon, see § 97-37-9.

Prohibition of sound mufflers for firearms, see § 97-37-31.

Dueling, see §§ 97-39-1 et seq.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Construction.
3. Weapons to which statute applies.
4. Concealment; mode of carrying.
5. Indictment or affidavit charging offense.
6. Instructions.
7. Double jeopardy.

1. In general.

The evidence was insufficient to support a conviction for carrying a concealed weapon under this section where the State presented no evidence to prove that the shotgun carried by the defendant had a barrel length of less than 18 inches; a gun with a barrel length in excess of 18 inches does not fall within the ambit of this section, and, therefore, the length of the barrel was an indispensable, statutory element which the State was required to prove beyond a reasonable doubt. Carlson v. State, 597 So. 2d 657, 1992 Miss. LEXIS 219 (Miss. 1992).

A high school student was properly adjudicated delinquent for having handguns on school grounds, where the guns were found in the student's locker, the student had exclusive possession of the locker and kept it under lock and key, and a second student testified that the first student had offered to sell him 2 handguns and had told him that he had the guns at school. S.C. v. State, 583 So. 2d 188, 1991 Miss. LEXIS 387 (Miss. 1991).

In the trial of a capital murder charge, no reversible error resulted from allowing testimony which sought to elicit the fact that a sawed-off shotgun barrel produces enhanced danger and a more severe wound when fired than does a barrel of regulation length. Wiley v. State, 484 So. 2d 339, 1986 Miss. LEXIS 2405 (Miss.), cert. denied, 479 U.S. 906, 107 S. Ct. 304, 93 L. Ed. 2d 278, 1986 U.S. LEXIS 4339 (U.S. 1986), overruled, Willie v. State, 585 So. 2d 660, 1991 Miss. LEXIS 454 (Miss. 1991).

The effect of double enhancement where the crime of carrying a concealed weapon after conviction of a felony is combined with sentencing under the habitual offenders statute does not render the latter statute unconstitutional. Failure of the state to specify in an indictment which section of the habitual criminal statute, § 99-19-81 or § 99-19-83, applies to a defendant is not error since the statutes are not criminal offenses and only affect sentencing. Osborne v. State, 404 So. 2d 545, 1981 Miss. LEXIS 2219 (Miss. 1981).

Throwing flashlight on person on street held not unlawful search, rendering incompetent evidence thus secured that she was unlawfully carrying a pistol partly concealed. Daniels v. Gulfport, 146 Miss. 517, 112 So. 686, 1927 Miss. LEXIS 262 (Miss. 1927).

This section [Code 1942, § 2079] is constitutional and under it one cannot carry a concealed weapon in his own home. Wilson v. State, 81 Miss. 404, 33 So. 171, 1902 Miss. LEXIS 159 (Miss. 1902).

The statute makes the fact of carrying a weapon concealed criminal, regardless of intent. Strahan v. State, 68 Miss. 347, 8 So. 844, 1890 Miss. LEXIS 71 (Miss. 1890).

The act of 1888, amendatory of the Code 1880, on the subject of carrying weapons concealed, was ex post facto in its application to offenses previously committed. (1) It cut off a defense, and (2) it changed, but did not mitigate, the penalty. Lindsey v. State, 65 Miss. 542, 5 So. 99, 1888 Miss. LEXIS 41 (Miss. 1888); Hodnett v. State, 66 Miss. 26, 5 So. 518, 1888 Miss. LEXIS 52 (Miss. 1888).

2. Construction.

Miss. Const. art. 3, § 12, Miss. Code Ann. § 97-37-1(2), and Miss. Code Ann.

§ 45-9-55 establish the express legislative action and the State law prohibitions, and an employee may be discharged at the employer's will for good reason, bad reason, or no reason at all, excepting reasons independently declared legally impermissible; an employee is wrongfully discharged if terminated for an act specifically allowed by State law, the prohibition of which is specifically disallowed by statutory law. Swindol v. Aurora Flight Scis. Corp., 194 So. 3d 847, 2016 Miss. LEXIS 131 (Miss. 2016).

The fact that a defendant is a priorly convicted felon is a necessary element of finding a defendant guilty of possession of a firearm by a priorly convicted felon and therefore must be presented to the jury during the guilt phase of a trial. Evans v. State, 802 So. 2d 137, 2001 Miss. App. LEXIS 522 (Miss. Ct. App. 2001).

The court rejected the contention that § 97-37-5 should be read in pari materia with this section to permit a convicted felon to possess a firearm in his own home. James v. State, 731 So. 2d 1135, 1999 Miss. LEXIS 33 (Miss. 1999).

3. Weapons to which statute applies.

A pistol is a "deadly weapon" within statute denouncing the exhibition or carrying of such weapon, even without proof that the pistol is loaded or presently capable of committing a violent injury. Cittadino v. State, 199 Miss. 235, 24 So. 2d 93, 1945 Miss. LEXIS 284 (Miss. 1945).

Carrying a pistol concealed is not necessarily a violation of this statute [Code 1942, § 2079]. Floyd v. Missouri State Life Ins. Co., 11 F. Supp. 1001, 1935 U.S. Dist. LEXIS 1513 (D. Miss. 1935), aff'd, 84 F.2d 35, 1936 U.S. App. LEXIS 4383 (5th Cir. Miss. 1936).

Worn out pistol totally beyond use as such, not a weapon. Burnside v. State, 105 Miss. 408, 62 So. 420, 1913 Miss. LEXIS 223 (Miss. 1913).

Razor not deadly weapon. Brown v. State, 105 Miss. 367, 62 So. 353, 1913 Miss. LEXIS 209 (Miss. 1913).

Object once a "pistol" does not cease to be one by becoming temporarily inefficient. Mitchell v. State, 99 Miss. 579, 55 So. 354, 1911 Miss. LEXIS 225 (Miss. 1911).

Whether a weapon is deadly is a question of fact. State v. Sims, 80 Miss. 381, 31 So. 907, 1902 Miss. LEXIS 272 (Miss. 1902).

An unloaded pistol is within this section [Code 1942, § 2079]. State v. Bollis, 73 Miss. 57, 19 So. 99, 1895 Miss. LEXIS 131 (Miss. 1895).

4. Concealment; mode of carrying.

Where an inmate's guilty plea for carrying a concealed weapon was based on the inmate's action of having a pistol under a blanket in a van, counsel was ineffective for allowing the inmate to plead guilty because there was no factual basis for the charge since Miss. Code Ann. § 97-37-1(2) allowed the inmate to possess a concealed firearm or deadly weapon within any motor vehicle. Knight v. State, 983 So. 2d 348, 2008 Miss. App. LEXIS 145 (Miss. Ct. App.), cert. denied, 981 So. 2d 298, 2008 Miss. LEXIS 267 (Miss. 2008), cert. denied, 555 U.S. 998, 129 S. Ct. 492, 172 L. Ed. 2d 363, 2008 U.S. LEXIS 8079 (U.S. 2008).

A pistol seen under a leg of a motorist and removed by a patrolman who had halted the car to check the driver's license is not obtained by an unlawful search and seizure so as to be inadmissible in a prosecution for carrying a concealed weapon. Morgan v. Heidelberg, 246 Miss. 481, 150 So. 2d 512, 1963 Miss. LEXIS 468 (Miss. 1963).

Carrying of pistol is within prohibition of statute where weapon is so carried that it is readily accessible. Clark v. Jackson, 155 Miss. 668, 124 So. 807, 1929 Miss. LEXIS 338 (Miss. 1929).

Evidence showing pistol was on floor of automobile concealed by defendant's feet held sufficient to sustain conviction for carrying concealed pistol. Clark v. Jackson, 155 Miss. 668, 124 So. 807, 1929 Miss. LEXIS 338 (Miss. 1929).

Under ordinance in words of statute prohibiting carrying concealed pistols, one carrying pistol concealed in whole or in part is guilty regardless of intent. Clark v. Jackson, 155 Miss. 668, 124 So. 807, 1929 Miss. LEXIS 338 (Miss. 1929).

Circumstances sufficient to go to the jury on issue of defendant carrying concealed pistol found under him when he arose from his seat. Duckworth v. Taylorsville, 142 Miss. 440, 107 So. 666, 1926 Miss. LEXIS 105 (Miss. 1926).

Person carrying deadly weapon only part of which is concealed, carries a "concealed weapon." Martin v. State, 93 Miss. 764, 47 So. 426, 1908 Miss. LEXIS 132 (Miss. 1908); Reed v. State, 199 So. 2d 803, 1967 Miss. LEXIS 1309 (Miss. 1967), cert. denied, 390 U.S. 413, 88 S. Ct. 1113, 19 L. Ed. 2d 1273, 1968 U.S. LEXIS 2174 (U.S. 1968).

5. Indictment or affidavit charging offense.

In a prosecution for possession of a deadly weapon by a defendant previously convicted of a felony, failure to charge in the indictment that the weapon had been "concealed in whole or in part" as provided in this section did not entitle defendant to a directed verdict and a peremptory instruction of not guilty where the defense never objected to the defective indictment by means of a demurrer as required by § 99-7-21, where the defendant was fully informed of the charges against him by the inclusion in the indictment of § 97-37-5 in conjunction with this section, and where there was no statute making it a crime to carry a deadly weapon unless it was concealed in whole or in part. Jones v. State, 383 So. 2d 498, 1980 Miss. LEXIS 1983 (Miss. 1980).

Section 97-37-5 requires that the indictment allege with particularity and specificity the state or federal jurisdiction of the prior felony conviction; additionally, such indictment must also substantially set forth the date of judgment of prior conviction, and nature or description of offense constituting previous felony conviction. Morgan v. United States Fidelity & Guaranty Co., 291 So. 2d 741, 1974 Miss. LEXIS 1749 (Miss. 1974).

A charge under this section [Code 1942, § 2079] cannot be consolidated with a charge of exhibiting a deadly weapon (Code 1942, § 2086) and a charge of assault and battery with fists (Code 1942, § 2562), and one trial had of the consolidated case. Woods v. State, 200 Miss. 527, 27 So. 2d 895, 1946 Miss. LEXIS 318 (Miss. 1946).

Affidavit charging defendant carried deadly weapon, to wit, a pistol concealed on his person, etc., but not charging that it was unlawfully carried, was fatally defective. Jordan v. State, 87 Miss. 170, 39 So. 895, 1905 Miss. LEXIS 144 (Miss. 1905); Whittaker v. State, 45 So. 145 (Miss. 1908); Pitman v. State, 107 Miss. 154, 65 So. 123, 1914 Miss. LEXIS 64 (Miss. 1914).

Since whether a weapon is deadly is a question of fact, an indictment is not demurrable because the weapon is not specifically mentioned in this statute [Code 1942, § 2079]. State v. Sims, 80 Miss. 381, 31 So. 907, 1902 Miss. LEXIS 272 (Miss. 1902).

6. Instructions.

An instruction in a prosecution for assault and battery with intent to kill and murder, in which it was assumed that the pistol used was a deadly weapon, is not erroneous since the statute denominates a pistol as a deadly weapon. Rowland v. State, 182 Miss. 886, 183 So. 527, 1938 Miss. LEXIS 208 (Miss. 1938).

Not error to instruct jury that if defendant carried concealed, in whole or in part, a pistol which was defective he would be guilty. Mitchell v. State, 99 Miss. 579, 55 So. 354, 1911 Miss. LEXIS 225 (Miss. 1911).

7. Double jeopardy.

As a conviction of possession of a firearm by a convicted felon (Miss. Code Ann. § 97-37-5) required proof of a prior felony, while conviction of carrying a concealed weapon (Miss. Code Ann. § 97-37-1) required proof that the weapon be concealed, each offense had an element not present in the other; therefore, defendant's conviction of both charges did not violate the double jeopardy ban. Wilson v. State, 95 So. 3d 1282, 2012 Miss. App. LEXIS 538 (Miss. Ct. App. 2012).

OPINIONS OF THE ATTORNEY GENERAL

This section sets forth stated exceptions to state law which makes it crime to carry certain weapons, including handguns, concealed in whole or part, including in motor vehicle or in home or business, including property surrounding such home or business. Bowen, Jan. 14, 1993, A.G. Op. #92-0934.

Mace is not considered to be "deadly" weapon within meaning of 97-37-1. Parlin, March 10, 1994, A.G. Op. #93-0865.

Carrying a firearm in a wholly or partially visible sheath, holster, scabbard or case, even though no part of the firearm is visible, does not violate the concealed weapon statute (Section 97-37-1). Lance, June 13, 2013, 2013 Miss. AG LEXIS 111.

If enough of a firearm is visible so that it is readily apparent to common observation, the firearm is not concealed and there is no violation of Section 97-37-1. Lance, June 13, 2013, 2013 Miss. AG LEXIS 111.

While carrying a weapon in a visible belt holster on educational property would not violate the concealed weapon statute (Section 97-37-1) it would violate Section 97-37-17's prohibition against carrying a weapon on education property. Lance, June 13, 2013, 2013 Miss. AG LEXIS 111.

The mere fact that an individual is openly carrying a weapon, absent anything more, does not give a law enforcement officer grounds to detain that individual or to require him to submit to questioning. Lance, June 13, 2013, 2013 Miss. AG LEXIS 111.

A private property owner or manager of a retail store or restaurant may exercise his property rights and deny entry to persons carrying weapons on his property whether those persons are carrying weapons openly or under an enhanced concealed permit. Lance, June 13, 2013, 2013 Miss. AG LEXIS 111.

A sheriff has the authority, if he determines it reasonable and necessary, to exclude openly carried firearms from courthouse premises. Lance, June 13, 2013, 2013 Miss. AG LEXIS 111.

RESEARCH REFERENCES

ALR.

Offense of carrying concealed weapon as affected by manner of carrying or place of concealment. 43 A.L.R.2d 492.

Application of statute or regulation dealing with registration or carrying of weapons to transient nonresident. 68 A.L.R.3d 1253.

Burden of proof as to lack of license in criminal prosecution for carrying or possession of weapon without license. 69 A.L.R.3d 1054.

Statutory presumption of possession of weapon by occupants of place or vehicle where it was found. 87 A.L.R.3d 949.

What constitutes "dangerous weapon" under statutes prohibiting the carrying of dangerous weapons in motor vehicle. 2 A.L.R.4th 1342.

What constitutes a "bludgeon," "blackjack," or "billy" within meaning of criminal possession statute. 11 A.L.R.4th 1272.

Sufficiency of evidence as to nature of firearm in prosecution under state statute prohibiting persons under indictment for, or convicted of, crime from acquiring, having, carrying, or using firearms. 37 A.L.R.4th 1179.

Fact that weapon was acquired for self-defense or to prevent its use against defendant as defense in prosecution for violation of state statute prohibiting persons under indictment for, or convicted of, crime from acquiring, having, carrying, or using firearms or weapons. 39 A.L.R.4th 967.

Sufficiency of prior conviction to support prosecution under state statute prohibiting persons under indictment for, or convicted of, crime from acquiring, having, carrying, or using firearms or weapons. 39 A.L.R.4th 983.

Validity of state statute proscribing possession or carrying of knife. 47 A.L.R.4th 651.

What amounts to "control" under state statute making it illegal for felon to have possession or control of firearm or other dangerous weapon. 66 A.L.R.4th 1240.

Fact that gun was unloaded as affecting criminal responsibility. 68 A.L.R.4th 507.

Fact that gun was broken, dismantled, or inoperable as affecting criminal responsibility under weapons statute. 81 A.L.R.4th 745.

Cigarette Lighter as Deadly or Dangerous Weapon. 22 A.L.R. 6th 533.

Petition for relief, under 18 USCS § 925(c) and implementing regulations, from disabilities imposed by federal gun control laws upon persons convicted of crime. 66 A.L.R. Fed. 351.

Am. Jur.

79 Am. Jur. 2d, Weapons and Firearms §§ 13 et seq.

13 Am. Jur. Trials, Defending Minor Felony Cases §§ 1 et seq.

CJS.

94 C.J.S., Weapons §§ 41-43, 47-50.

§ 97-37-3. Deadly weapons; forfeiture of weapon; return upon dismissal or acquittal; confiscated firearms may be sold at auction; proceeds of sale used to purchase bulletproof vests for seizing law enforcement agency.

(1) Any weapon used in violation of Section 97-37-1, or used in the commission of any other crime, shall be seized by the arresting officer, may be introduced in evidence, and in the event of a conviction, shall be ordered to be forfeited, and shall be disposed of as ordered by the court having jurisdiction of such offense. In the event of dismissal or acquittal of charges, such weapon shall be returned to the accused from whom it was seized.

(2)(a) If the weapon to be forfeited is merchantable, the court may order the weapon forfeited to the seizing law enforcement agency.

(b) A weapon so forfeited to a law enforcement agency may be sold at auction as provided by Sections 19-3-85 and 21-39-21 to a federally-licensed firearms dealer, with the proceeds from such sale at auction to be used to buy bulletproof vests for the seizing law enforcement agency.

HISTORY: Codes, 1880, § 2985; 1892, § 1026; 1906, §§ 1103, 1104; Hemingway's 1917, §§ 829, 830; 1930, §§ 853, 854; 1942, § 2079; Laws, 1898, p. 86; Laws, 1960, ch. 242, § 1; Laws, 1962, ch. 310, § 1; Laws, 1979, ch. 396; Laws, 2003, ch. 349, § 1, eff from and after July 1, 2003.

Cross References — Other sections derived from same 1942 code section, see §§ 97-37-1, 97-37-5, 97-37-7.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Forfeiture improper.

1. In general.

Defendant, who was convicted of illegal posession of firearms by convicted felon, had a constitutionality protected property interest in the firearms which could not be extinguished without according the defendant due process. Cooper v. Greenwood, 904 F.2d 302, 1990 U.S. App. LEXIS 10827 (5th Cir. Miss. 1990).

Defendant's acquittal on criminal charges involving firearms does not preclude subsequent in rem forfeiture proceeding against same firearms because neither collateral estoppel or double jeopardy bars civil, remedial forfeiture proceeding initiated following acquittal on related criminal charges. United States v. One Assortment of 89 Firearms, 465 U.S. 354, 104 S. Ct. 1099, 79 L. Ed. 2d 361, 1984 U.S. LEXIS 31 (U.S. 1984), but see Cooper v. Greenwood, 904 F.2d 302, 1990 U.S. App. LEXIS 10827 (5th Cir. Miss. 1990).

A pistol seen under a leg of a motorist and removed by a patrolman who had halted the car to check the driver's license is not obtained by an unlawful search and seizure so as to be inadmissible in a prosecution for carrying a concealed weapon. Morgan v. Heidelberg, 246 Miss. 481, 150 So. 2d 512, 1963 Miss. LEXIS 468 (Miss. 1963).

2. Forfeiture improper.

Forfeiture of minor defendant's handgun was improper in a case where there was no charge filed against the minor that would have made the seizure of the handgun legal. Miss. Comm'n on Judicial Performance v. Lewis, 830 So. 2d 1138, 2002 Miss. LEXIS 247 (Miss. 2002).

OPINIONS OF THE ATTORNEY GENERAL

There is no requirement that the confiscated weapons be destroyed; the court may order the disposition of such weapons by public auction after all appeal rights have been exhausted or such further time as the court deems proper. Donald, April 10, 1998, A.G. Op. #98-0193.

The fact that the judge who heard the case is no longer in office does not remove jurisdiction over confiscated weapons from the court in which the case was disposed. Aldridge, October 9, 1998, A.G. Op. #98-0627.

The statute places the manner of disposition of confiscated weapons in the discretion of the court having jurisdiction over the offense. Aldridge, October 9, 1998, A.G. Op. #98-0627.

The Mississippi Department of Public Safety may not recognize a Louisiana first offender pardon for the purposes of issuing a weapons permit. Spann, Jan. 25, 2002, A.G. Op. #02-0012.

If an individual is convicted of a crime in municipal court and a weapon was used in that crime, the court may forfeit the weapon to the municipality. Spearnock, Feb. 27, 2004, A.G. Op. 04-0072.

If a city wishes to dispose of the firearms it acquired in drug-related cases it must follow the requirements set out in this section. Elliott, Nov. 30, 2004, A.G. Op. 04-0581.

RESEARCH REFERENCES

ALR.

Offense of carrying concealed weapon as affected by manner of carrying or place of concealment. 43 A.L.R.2d 492.

Validity of state statute proscribing possession or carrying of knife. 47 A.L.R.4th 651.

Seizure and forfeiture of firearms or ammunition under 18 USCS § 924(d). 57 A.L.R. Fed. 234.

What circumstances fall within "inevitable discovery" exception to rule precluding admission, in criminal case, of evidence obtained in violation of Federal Constitution. 81 A.L.R. Fed. 331.

Law Reviews.

1979 Mississippi Supreme Court Review: Criminal Law and Procedure. 50 Miss. L. J. 763, December 1979.

Payne, An introduction to civil forfeiture in Mississippi: An effective law enforcement tool or cash register justice? 59 Miss. L. J. 453, Fall 1989.

§ 97-37-5. Unlawful for convicted felon to possess any firearms, or other weapons or devices; penalties; exceptions.

(1) It shall be unlawful for any person who has been convicted of a felony under the laws of this state, any other state, or of the United States to possess any firearm or any bowie knife, dirk knife, butcher knife, switchblade knife, metallic knuckles, blackjack, or any muffler or silencer for any firearm unless such person has received a pardon for such felony, has received a relief from disability pursuant to Section 925(c) of Title 18 of the United States Code, or

has received a certificate of rehabilitation pursuant to subsection (3) of this section.

(2) Any person violating this section shall be guilty of a felony and, upon conviction thereof, shall be fined not more than Five Thousand Dollars ($5,000.00), or committed to the custody of the State Department of Corrections for not less than one (1) year nor more than ten (10) years, or both.

(3) A person who has been convicted of a felony under the laws of this state may apply to the court in which he was convicted for a certificate of rehabilitation. The court may grant such certificate in its discretion upon a showing to the satisfaction of the court that the applicant has been rehabilitated and has led a useful, productive and law-abiding life since the completion of his sentence and upon the finding of the court that he will not be likely to act in a manner dangerous to public safety.

(4)(a) A person who is discharged from court-ordered mental health treatment may petition the court which entered the commitment order for an order stating that the person qualifies for relief from a firearms disability.

(b) In determining whether to grant relief, the court must hear and consider evidence about:

(i) The circumstances that led to imposition of the firearms disability under 18 USC, Section 922(d)(4);

(ii) The person's mental history;

(iii) The person's criminal history; and

(iv) The person's reputation.

(c) A court may not grant relief unless it makes and enters in the record the following affirmative findings:

(i) That the person is no longer likely to act in a manner dangerous to public safety; and

(ii) Removing the person's disability to purchase a firearm is not against the public interest.

HISTORY: Codes, 1880, § 2985; 1892, § 1026; 1906, § 1103; Hemingway's 1917, § 829; 1930, § 853; 1942, § 2079; Laws, 1898, p. 86; Laws, 1960, ch. 242, § 1; Laws, 1962, ch. 310, § 1; Laws, 1993, ch. 482, § 1; Laws, 2007, ch. 322, § 1; Laws, 2007, ch. 530, § 2; Laws, 2013, ch. 384, § 3, eff from and after July 1, 2013.

Joint Legislative Committee Note — Section 1 of ch. 322, Laws of 2007, effective July 1, 2007 (approved March 13, 2007), amended this section. Section 2 of ch. 530, Laws of 2007, effective July 1, 2007 (approved April 18, 2007), also amended this section. As set out above, this section reflects the language of Section 2 of ch. 530, Laws of 2007, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Cross References — Clerk of court to provide to Department of Public Safety certain information about individuals for whom the court has entered an order of relief from a firearms disability under this section, see § 9-1-49.

Other sections derived from same 1942 code section, see §§ 97-37-1, 97-37-3, 97-37-7.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Constitutionality.
3. Construction.
4. Sufficiency of Indictment.
5. Admission of evidence.
6. Jury instructions.
7. Photo identification.
8. Insufficient evidence.
9. Sufficient evidence.
10. "Convicted felon."
11. Directed verdict.
12. Double jeopardy.
13. New trial.
14. Weight of the evidence.
15. Ineffective assistance of counsel.

1. In general.

State did not err by using the phrase "constructive possession" during defendant's trial because constructive possession allows the State to establish possession when evidence of actual possession is absent. Barton v. State, — So. 3d —, 2020 Miss. App. LEXIS 9 (Miss. Ct. App. Jan. 14, 2020), aff'd, in part, rev'd, — So. 3d —, 2020 Miss. LEXIS 356 (Miss. 2020).

Amendment to an indictment to change the crime that defendant was previously convicted of from murder to manslaughter was not a substantive change since it would not have mattered what felony defendant was previously convicted of for the crime of possession of a firearm by a felon. Speagle v. State, 956 So. 2d 237, 2006 Miss. App. LEXIS 616 (Miss. Ct. App. 2006), cert. denied, 957 So. 2d 1004, 2007 Miss. LEXIS 296 (Miss. 2007).

Where witness testimony, including that of a defense witness, placed defendant at the crime scene with a gun, the evidence was sufficient to find defendant guilty of being a felon in possession of a firearm. Hope v. State, 840 So. 2d 747, 2003 Miss. App. LEXIS 208 (Miss. Ct. App. 2003).

While defendant offered contrary testimony, the State produced witnesses who either identified defendant as the shooter or to whom he was alleged to have confessed, creating a classic credibility question which the jury resolved adversely to defendant; considering that testimony, there was no error when the jury found that defendant possessed a weapon beyond a reasonable doubt. Fort v. State, 752 So. 2d 458, 1999 Miss. App. LEXIS 682 (Miss. Ct. App. 1999).

A sentence of life imprisonment without probation or parole for a defendant convicted of carrying a concealed weapon after conviction of a felony under this section did not violate the prohibition against cruel and unusual punishment. Baker v. State, 394 So. 2d 1376, 1981 Miss. LEXIS 1960 (Miss. 1981).

In a prosecution for possession of a deadly weapon by a defendant previously convicted of a felony, failure to charge in the indictment that the weapon had been "concealed in whole or in part" as provided in § 97-37-1 did not entitle defendant to a directed verdict and a peremptory instruction of not guilty where the defense never objected to the defective indictment by means of a demurrer as required by § 99-7-21, where the defendant was fully informed of the charges against him by the inclusion in the indictment of this section in conjunction with § 97-37-1, and where there was no statute making it a crime to carry a deadly weapon unless it was concealed in whole or in part. Jones v. State, 383 So. 2d 498, 1980 Miss. LEXIS 1983 (Miss. 1980).

This section requires that the indictment allege with particularity and specificity the state or federal jurisdiction of the prior felony conviction; additionally, such indictment must also substantially set forth the date of judgment of prior conviction, and nature or description of offense constituting previous felony conviction. Morgan v. United States Fidelity & Guaranty Co., 291 So. 2d 741, 1974 Miss. LEXIS 1749 (Miss. 1974).

2. Constitutionality.

This section does not violate the rights of citizens to keep and bear arms, as provided in Article 3, Section 12 of the Constitution. James v. State, 731 So. 2d 1135, 1999 Miss. LEXIS 33 (Miss. 1999).

3. Construction.

Evidence was sufficient to support defendant's conviction for armed robbery because the armed robbery statute was not tethered to the statute that prohibited a convicted felon from possessing certain kinds of knives; even if it were, nothing in the statute that prohibited a convicted felon from possessing certain kinds of knives precluded a finding that the knives enumerated therein were deadly weapons within the meaning of the armed robbery statute; and the knife that the State submitted as evidence – whether it was a butcher knife, steak knife, paring knife, or some other kind of knife – could likely produce death or serious bodily harm to a human being if used as a weapon. Harris v. State, 172 So. 3d 191, 2014 Miss. App. LEXIS 490 (Miss. Ct. App. 2014), cert. denied, — So. 3d —, 2015 Miss. LEXIS 420 (Miss. 2015).

Insufficient evidence was presented at trial to support a guilty verdict on a felon in possession of a knife count because the pocket knife that was used in an altercation was not one of the weapons that Miss. Code Ann. § 97-37-5(1) deemed unlawful for a convicted felon to possess. The knife was a small ordinary pocket knife with a two-and-a-half-inch blade. Williams v. State, 37 So. 3d 717, 2010 Miss. App. LEXIS 301 (Miss. Ct. App. 2010).

The court rejected the contention that this section should be read in pari materia with § 97-37-1 to permit a convicted felon to possess a firearm in his own home. James v. State, 731 So. 2d 1135, 1999 Miss. LEXIS 33 (Miss. 1999).

4. Sufficiency of Indictment.

In a possession of a firearm by a convicted felon case, the indictment was not defective and the trial court did not err in granting the State's motion to amend the indictment to remove the language describing the type of gun because the State was required to prove that defendant possessed a gun, not a specific type of gun; and the defense to the charge was that defendant did not possess a gun and did not shoot another individual. Williams v. State, 269 So. 3d 192, 2018 Miss. App. LEXIS 39 (Miss. Ct. App.), cert. denied, 258 So. 3d 287, 2018 Miss. LEXIS 525 (Miss. 2018).

Dismissal of an indictment charging defendant with being a felon in possession of a weapon and reversal of the conviction thereunder were required because the indictment failed to specify which, if any, of the four types of prohibited knives defendant was alleged to have possessed in violation of defendant's federal and state constitutional rights. Thomas v. State, 126 So. 3d 877, 2013 Miss. LEXIS 528 (Miss. 2013).

5. Admission of evidence.

In a case convicting defendant of possession of controlled substance with intent to distribute and unlawful possession of a firearm as a convicted felon, because the possession and discovery of the other two firearms were so interrelated to the charged crime of possession with intent to distribute cocaine that the events constituted a single transaction or occurrence, the admission of the two other firearms discovered along with the other handgun at the time of defendant's arrest did not violate the other crimes evidence rule. Anderson v. State, 195 So. 3d 835, 2016 Miss. App. LEXIS 20 (Miss. Ct. App.), cert. denied, 209 So. 3d 433, 2016 Miss. LEXIS 301 (Miss. 2016).

In a case convicting defendant of possession of controlled substance with intent to distribute and unlawful possession of a firearm as a convicted felon, the admission of the two other firearms found during a search of defendant's house was not needed to prove unlawful possession of a firearm by a convicted felon in count two of the indictment because the prosecution had offered another handgun for that purpose; however, the prosecution introduced the two other firearms that were discovered in the search as they were relevant to defendant's intent to distribute cocaine as charged in count one of the indictment. Anderson v. State, 195 So. 3d 835, 2016 Miss. App. LEXIS 20 (Miss. Ct. App.), cert. denied, 209 So. 3d 433, 2016 Miss. LEXIS 301 (Miss. 2016).

Where a witness testified that defendant was parked on his property, he saw a shotgun underneath the car seat and threw it into a ditch; a deputy testified that he retrieved the shotgun from the ditch and locked in it his trunk until he turned it over to the sheriff. The shotgun was then placed in the evidence locker where it remained until an employee of the sheriff's office brought it to court on the morning of the trial; the testimony was sufficient to establish the chain of custody so that the shotgun was properly admitted into evidence during defendant's trial for possession of a firearm by a convicted felon in violation of Miss. Code Ann. § 97-37-5(1). Cooley v. State, 14 So. 3d 63, 2008 Miss. App. LEXIS 701 (Miss. Ct. App. 2008).

6. Jury instructions.

Circuit court in defendant's trial for possession of a firearm as a convicted felon did not improperly instruct the jury regarding defendant's stipulation that defendant had a prior felony conviction because the instruction did not improperly relieve the State of Mississippi of proving every element of the crime charged beyond a reasonable doubt. Furthermore, the absence of a limiting instruction in the case did not render defendant's trial fundamentally unfair. Jones v. State, 261 So. 3d 1131, 2018 Miss. App. LEXIS 198 (Miss. Ct. App. 2018), cert. denied, 260 So. 3d 797, 2019 Miss. LEXIS 32 (Miss. 2019).

Jury instructions reflected, as required, that the trial court fairly announced the law defining the crime of unlawful possession of a firearm by a convicted felon, so there was no error as defendant claimed. Billups v. State, 270 So. 3d 917, 2018 Miss. App. LEXIS 461 (Miss. Ct. App. 2018).

Trial court did not err in denying defendant's requested jury instruction because the instructions given covered the issue of "knowing possession"; when read as a whole, the instructions properly stated the law and required the jury to find that all elements of the offense had been proved before defendant could be found guilty. Hartzog v. State, 240 So. 3d 462, 2017 Miss. App. LEXIS 670 (Miss. Ct. App. 2017).

Trial court was within its authority to issue a supplemental instruction because the jury was fairly and fully appraised of the applicable law through the instructions given; the supplemental instruction charged the jury it had to find beyond a reasonable doubt that defendant was aware of the presence and character of a particular item, and the item was subject to his dominion and control. Hartzog v. State, 240 So. 3d 462, 2017 Miss. App. LEXIS 670 (Miss. Ct. App. 2017).

In a case where defendant pawned a suicidal friend's gun, gave him the money so that he could travel to his brother's place in Tennessee, and was subsequently convicted of being a felon in possession of a firearm, defendant's requested jury instruction on the defense of necessity was properly denied because the State was not required to disprove defendant's necessity defense; defendant received a jury instruction on the defense of necessity that correctly stated the law; and the jury determined that necessity did not exist for defendant to have possession of the gun as he did not prove that the act charged was done to prevent a significant evil, there was no adequate alternative, and the harm caused was not disproportionate to the harm avoided. Smith v. State, 208 So. 3d 1, 2016 Miss. App. LEXIS 545 (Miss. Ct. App. 2016).

Defendant's conviction for felon in possession of a firearm was proper because he failed to request an instruction on the necessity defense and the record did not support any evidentiary basis for instructing the jury on the necessity defense since defendant failed to show that no adequate alternative was available other than possessing the firearm he used to shoot the victim when the victim was unarmed. Anderson v. State, 185 So. 3d 1015, 2014 Miss. App. LEXIS 597 (Miss. Ct. App. 2014), aff'd, 185 So. 3d 966, 2015 Miss. LEXIS 567 (Miss. 2015).

Defendant's conviction for felon in possession of a firearm was proper because the State correctly argued that self-defense failed to constitute a defense to that crime. Thus, there was no error in giving the jury instruction at issue. Anderson v. State, 185 So. 3d 1015, 2014 Miss. App. LEXIS 597 (Miss. Ct. App. 2014), aff'd, 185 So. 3d 966, 2015 Miss. LEXIS 567 (Miss. 2015).

Defendant was not entitled to a jury instruction on self-defense because self-defense was not a viable defense to possession of a firearm by a convicted felon. Possession of a firearm by a convicted felon was a criminal act void of a third party to defend against. Roberson v. State, 19 So. 3d 95, 2009 Miss. App. LEXIS 98 (Miss. Ct. App. 2009).

Defendant, in his trial for being a felon in possession of a firearm, argued that a State proffered jury instruction peremptorily told the jury that defendant had not received a pardon, a relief from a disability or a certificate of rehabilitation, thereby resulting in plain error by relieving the jury from finding each element of the offense; however, the absence of a pardon, relief from a disability, or a certificate of rehabilitation were not essential elements of the crime of possession of a firearm by a convicted felon. Whether defendant received a pardon for the felony, or received a certificate of rehabilitation pursuant to Miss. Code Ann. § 97-37-5(4)(c) was an affirmative defense that was incumbent upon defendant to raise. Hicks v. State, 973 So. 2d 211, 2007 Miss. LEXIS 693 (Miss. 2007).

Trial court did not err in failing to issue a limiting jury instruction, sua sponte, regarding defendant's prior felony convictions because Miss. Code Ann. § 97-37-5 did not limit the number of prior felony convictions to be proven to show that defendant was a felon in possession of a firearm; thus, while giving a a limiting instruction sua sponte might have been the better practice, failure to give the limiting instruction sua sponte was not reversible error. Ferguson v. State, 856 So. 2d 334, 2003 Miss. App. LEXIS 133 (Miss. Ct. App. 2003).

7. Photo identification.

Application of the Biggers factors to defendant's case established that: (1) the victim of the armed robbery had ample opportunity to observe defendant; (2) while defendant was present in the store, there was nothing to distract the victim's attention from him; (3) the victim phoned a description of the robber to the police department immediately after the robbery; (4) the victim did not express any uncertainty about the identification of defendant; and (5) the time between the robbery and the identification was short; thus, there were sufficient indicia of reliability to allow the identification of defendant, and defendant's convictions for armed robbery and possession of a firearm by a convicted felon were affirmed. Ferguson v. State, 856 So. 2d 334, 2003 Miss. App. LEXIS 133 (Miss. Ct. App. 2003).

8. Insufficient evidence.

Evidence was insufficient to prove that defendant constructively possessed a handgun found in a man's jacket in a bedroom closet where defendant's wallet was found on the bedroom dresser because defendant's grandparent owned the home where the gun was found, there was no testimony that defendant lived or stayed in the home, that the clothes in the closet belonged to defendant, or that defendant had handled the gun in the past. There was also no testimony that defendant's fingerprints were found on the gun. McGlothin v. State, 238 So. 3d 1, 2017 Miss. App. LEXIS 483 (Miss. Ct. App. 2017).

Evidence was insufficient to convict defendant of being a felon-in-possession-of-a-weapon because a butcher knife had been defined in various ways, including as a heavy-duty knife, usually six to eight inches long having a broad rigid blade that curved slightly at the tip, and as a large, very sharp knife for cutting or trimming meat; and the knife in defendant's case did not fit either definition of a butcher knife, as it was not large or heavy duty and did not have a broad blade that curved slightly at the tip, and the blade of the knife did not appear to be rigid. Harris v. State, 172 So. 3d 191, 2014 Miss. App. LEXIS 490 (Miss. Ct. App. 2014), cert. denied, — So. 3d —, 2015 Miss. LEXIS 420 (Miss. 2015).

Defendant's conviction for possession of a dirk knife by a convicted felon in violation of Miss. Code Ann. § 97-37-5 (Supp. 2009) was overturned as evidence failed to show that he was in possession of a dirk knife. A dirk knife had to have a blade with one sharpened edge that tapered to a point and had to be designed for use primarily as a stabbing weapon. Summerall v. State, 41 So. 3d 729, 2010 Miss. App. LEXIS 280 (Miss. Ct. App. 2010).

9. Sufficient evidence.

Because a rational jury could have found defendant guilty of possession of a firearm by a felon, it was within the circuit court's discretion to deny defendant's motion for judgment notwithstanding the verdict; because the victims had both been shot, the jury could have found that their killer possessed a firearm, and because defendant stipulated that he had previously been convicted of a felony, it was reasonable for the jury to find him guilty of possession of a firearm by a felon. Taylor v. State, — So. 3d —, 2020 Miss. App. LEXIS 176 (Miss. Ct. App. May 12, 2020).

Sufficient evidence supported defendant's conviction for possession of a firearm by a convicted felon because at trial, defendant stipulated he was a convicted felon, and direct evidence showed he actually possessed the gun; an officer saw defendant holding a pistol and watched defendant toss the pistol over a car's roof. Williams v. State, 285 So. 3d 156, 2019 Miss. LEXIS 397 (Miss. 2019).

Any rational trier of fact could have found the essential elements of possession of a firearm by a felon beyond a reasonable doubt because the victim testified that he saw a gun in defendant's hand on the night of a shooting, and defendant stipulated that he had a prior felony conviction. Johnson v. State, 281 So. 3d 1221, 2019 Miss. App. LEXIS 206 (Miss. Ct. App. 2019).

In a case in which defendant was convicted of burglary of a dwelling and possession of a firearm by a convicted felon, there was sufficient evidence to warrant a finding that defendant was aware of the presence of guns and was intentionally in possession of them. A witness stated he observed defendant handle the guns after they were taken from a residence. Weaver v. State, 282 So. 3d 1217, 2019 Miss. App. LEXIS 482 (Miss. Ct. App. 2019).

Evidence was sufficient to convict defendant of possession of a firearm by a convicted felon because defendant admitted that he was a convicted felon; a witness testified that he saw defendant holding a gun; and witness testimony could be sufficient to convict a defendant of possession of a weapon by a felon even if no weapon was recovered. Williams v. State, 269 So. 3d 192, 2018 Miss. App. LEXIS 39 (Miss. Ct. App.), cert. denied, 258 So. 3d 287, 2018 Miss. LEXIS 525 (Miss. 2018).

Circuit court properly denied defendant's motion for a judgment notwithstanding the verdict or, in the alternative, for a new trial, because, inter alia, there was sufficient evidence to support his conviction of possession of a firearm by a convicted felon where he admitted to pleading guilty to a felony in 1997 and purchasing a gun in 2007, his 10-year sentence was within the statutory limit, and his vague allegation of ineffective assistance of counsel was impossible to review. Bender v. State, 240 So. 3d 511, 2018 Miss. App. LEXIS 120 (Miss. Ct. App. 2018).

There was sufficient evidence to support defendant's conviction for possession of a weapon by a convicted felon because a witness testified that defendant, a convicted felon, mouthed to her that there was a gun in the backpack, and a bullet found on defendant was the same brand and caliber that was loaded in the handgun located in the backpack. Duncan v. State, 240 So. 3d 519, 2018 Miss. App. LEXIS 133 (Miss. Ct. App. 2018).

Evidence supported defendant's conviction for possession of a firearm as a convicted felon because a police officer observed a gun inside a parked vehicle owned by defendant, defendant was standing in the vicinity of the car when the officer approached defendant, defendant had the keys to the locked car in defendant's possession, and defendant was a convicted felon. Jones v. State, 261 So. 3d 1131, 2018 Miss. App. LEXIS 198 (Miss. Ct. App. 2018), cert. denied, 260 So. 3d 797, 2019 Miss. LEXIS 32 (Miss. 2019).

Evidence was sufficient to convict defendant of possession of weapons by a convicted felon because defendant opened the door and allowed the officers to search the home; an officer testified that defendant owned the home, and no contradictory evidence as to that fact was presented at trial; the officers discovered five guns in the home, and testified that defendant admitted to them that the guns were his; and the Circuit Clerk of Copiah County, who was questioned about the 1998 sentencing order on defendant's possession-of-stolen-property guilty plea, testified that she was charged with recording such orders and that the crime of possession of stolen property was recorded as a felony. Toliver v. State, 271 So. 3d 513, 2018 Miss. App. LEXIS 543 (Miss. Ct. App. 2018).

Evidence was sufficient to convict defendant of firearm possession by a felon because both parties stipulated that defendant previously had a felony conviction; and the victim testified about the gun, its size, and defendant's aiming it directly at her. Johnson v. State, 264 So. 3d 822, 2018 Miss. App. LEXIS 546 (Miss. Ct. App. 2018).

Verdict finding defendant guilty of aggravated assault and firearm possession by a felon was not so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice because the victim testified that when she entered the house, the culprit, whom she identified as defendant, came out of a backroom, pointed a long gun at her, and told her to "hold it"; she heard a click from the gun and ran from the house for help; she testified about the gun he aimed at her and its size; and the jury heard from the police regarding their pursuit and eventual capture of defendant and about the victim's identification of defendant as the burglar. Johnson v. State, 264 So. 3d 822, 2018 Miss. App. LEXIS 546 (Miss. Ct. App. 2018).

There was sufficient evidence to convict defendant of constructive possession of the rifle, for purposes of unlawful possession of a firearm by a convicted felon; defendant exited a shed, which was nearly empty, a rifle was just inside the shed's door, defendant was the only person in the shed, and he was within reach of the rifle. Billups v. State, 270 So. 3d 917, 2018 Miss. App. LEXIS 461 (Miss. Ct. App. 2018).

Defendant was properly convicted of possession of a deadly weapon by a convicted felon because the evidence was sufficient for the jury to conclude that defendant possessed a butcher knife where he never requested a jury instruction to define butcher knife, nor did he define it for the jury, an investigator testified that the blade of the knife was approximately eight inches with a curved tip and a sharp edge,, and the jury viewed the knife after it was admitted into evidence. Ware v. State, 263 So. 3d 675, 2018 Miss. App. LEXIS 459 (Miss. Ct. App. 2018), cert. denied, 263 So. 3d 666, 2019 Miss. LEXIS 76 (Miss. 2019).

Evidence was sufficient to support defendant's conviction for being a felon in possession of a firearm because the State of Mississippi presented testimony from multiple witnesses at trial who saw defendant in possession of a firearm. In addition, defendant admitted that defendant stayed in a home in which other people had guns, although defendant denied that defendant was in actual possession of those guns. Foster v. State, 221 So. 3d 1054, 2017 Miss. App. LEXIS 317 (Miss. Ct. App. 2017).

Defendant's conviction for being a felon in possession of a firearm was supported by evidence a recorded jail telephone conversation in which defendant admitted that the gun recovered had been used to commit the murder and he was the last person to touch the gun. Christian v. State, 207 So. 3d 1207, 2016 Miss. LEXIS 463 (Miss. 2016).

Evidence was sufficient to convict defendant of being a felon in possession of a firearm because, although defendant pointed out that he lived at the home with multiple roommates, no evidence was presented that the shotgun belonged to anyone other than defendant, who was the home's owner; and defendant failed to present any evidence to rebut the presumption that he constructively possessed the shotgun. Affleck v. State, 210 So. 3d 1067, 2015 Miss. App. LEXIS 675 (Miss. Ct. App. 2015), cert. denied, 203 So. 3d 598, 2016 Miss. LEXIS 388 (Miss. 2016), cert. denied, — So. 3d —, 2016 Miss. LEXIS 391 (Miss. 2016), cert. denied, — U.S. —, 137 S. Ct. 1091, 197 L. Ed. 2d 201, 2017 U.S. LEXIS 1278 (U.S. 2017).

Testimony defendant went to his bedroom to retrieve a shotgun, which he proceeded to waive around, and that defendant was previously convicted of a felony was sufficient to support his conviction felon in possession of a firearm. Jordan v. State, 212 So. 3d 836, 2015 Miss. App. LEXIS 655 (Miss. Ct. App. 2015), aff'd, 212 So. 3d 817, 2016 Miss. LEXIS 542 (Miss. 2016).

In a prosecution of defendant for attempted armed robbery and felon in possession of a firearm, the trial court did not abuse its discretion in denying defendant's motion for a new trial. Because the jury heard the testimony identifying defendant as the perpetrator, as well as alibi testimony, and weighed the credibility of each witness in its determination of the verdicts, it could not be said the evidence weighed against the guilty verdicts. Sanders v. State, 162 So. 3d 868, 2015 Miss. App. LEXIS 199 (Miss. Ct. App. 2015).

There was sufficient evidence to support defendant's convictions for murder and possession of a firearm by a convicted felon because a witness testified that defendant threatened the victim with a gun and then fired the gun at the victim multiple times; the evidence revealed that the victim died as a result of gunshot wounds, and the projectiles retrieved from his body matched the caliber of the gun that defendant was believed to have possessed. McKnight v. State, 187 So. 3d 635, 2015 Miss. App. LEXIS 276 (Miss. Ct. App. 2015), cert. denied, 188 So. 3d 575, 2016 Miss. LEXIS 142 (Miss. 2016).

Possession of a firearm by a felon conviction was not against the overwhelming weight of the evidence because, though defendant alleged that he shot a victim in order to stop the victim from shooting him, defendant did not meet the required elements of necessity regarding the shooting, and failed to explain why he kept the firearm when he fled the scene. Davis v. State, 158 So. 3d 1190, 2015 Miss. App. LEXIS 63 (Miss. Ct. App. 2015).

Trial court properly denied defendant's motions for a directed verdict, a new trial, and a peremptory instruction because he had constructive possession of the gun found in the backpack that was within arm's reach, the jury found a police investigator to be more credible in finding defendant guilty of being a felon in possession of a weapon, and his failure to cite authority supporting his claim of error in denying his request for a peremptory instruction constituted a procedural bar to review. Body v. State, 147 So. 3d 890, 2014 Miss. App. LEXIS 517 (Miss. Ct. App. 2014).

Trial court properly denied defendant's motion for a judgment notwithstanding the verdict or a new trial because the evidence was sufficient to convict him of possession of a firearm by a convicted felon where he stipulated that he was a convicted felon, a police officer testified that he saw defendant running with a gun in his hand and another officer testified that he heard a gun hit the ground, only officers were in the area, and he recovered the gun. Pryor v. State, 148 So. 3d 381, 2014 Miss. App. LEXIS 143 (Miss. Ct. App. 2014), cert. denied, 154 So. 3d 33, 2015 Miss. LEXIS 49 (Miss. 2015).

As defendant's counsel stipulated to the prior conviction for purposes of a charge against him of possession of a firearm by a convicted felon in order to avoid introduction of evidence that defendant had at least four prior felony convictions, the evidence was sufficient to support the possession conviction. Rogers v. State, 130 So. 3d 544, 2013 Miss. App. LEXIS 342 (Miss. Ct. App. 2013), cert. denied, 131 So. 3d 577, 2014 Miss. LEXIS 58 (Miss. 2014).

Appellant's suit against the State for wrongful conviction and imprisonment for possession of a firearm by a convicted felon was properly dismissed. His claim that the firearm was inoperable was unavailing because he offered no evidence that it could not be readily converted to expel a projectile, and the State was not required to prove that the weapon was operable at the time of his arrest. Hymes v. State, 121 So. 3d 938, 2013 Miss. App. LEXIS 272 (Miss. Ct. App. 2013), overruled in part, Edmonds v. State, 234 So. 3d 286, 2017 Miss. LEXIS 269 (Miss. 2017).

State met its burden of proving each of the elements of possession of a firearm by a convicted felon beyond a reasonable doubt because a handgun, discovered by a police officer during a protective sweep of a vehicle, was found under the driver's seat; because defendant was the driver of the vehicle, the handgun was subject to his dominion and control, even though it was not discovered in his actual physical possession. Lewis v. State, 112 So. 3d 1092, 2013 Miss. App. LEXIS 220 (Miss. Ct. App. 2013).

Conviction of possession of a weapon by a convicted felon, Miss. Code Ann. § 97-37-5, was supported by sufficient evidence because defendant's uncle unequivocally testified that defendant was the one who delivered a shotgun to him, and a deputy testified that defendant admitted that he took the gun and sold it to his uncle; defendant made the admission to the deputy when the deputy was merely beginning an investigation and defendant volunteered the information without questioning or prompting, so Miranda warnings were not required. Henderson v. State, 117 So. 3d 636, 2013 Miss. App. LEXIS 104 (Miss. Ct. App.), cert. dismissed, 121 So. 3d 918, 2013 Miss. LEXIS 507 (Miss. 2013).

There was sufficient evidence for the jury to convict defendant of being a felon in possession of what it determined was a butcher knife because what type of knife defendant used was a question of fact for the jury to determine; direct evidence was admitted in the form of eyewitness testimony, the handle of the knife was placed in evidence, and circumstantial evidence was presented as to the length of the blade and its strength. Thomas v. State, 178 So. 3d 771, 2012 Miss. App. LEXIS 605 (Miss. Ct. App. 2012), aff'd in part, 126 So. 3d 877, 2013 Miss. LEXIS 528 (Miss. 2013).

Defendant's conviction for being a felon in possession of a firearm was supported by the evidence because the jury was presented with testimony and evidence that defendant attempted to feloniously take money from victims against their will by putting them in fear of immediate injury by the exhibition of a deadly weapon, i.e., a gun; defendant admitted to being a prior-convicted felon. Tugle v. State, 68 So. 3d 691, 2010 Miss. App. LEXIS 668 (Miss. Ct. App. 2010), cert. denied, 69 So. 3d 767, 2011 Miss. LEXIS 416 (Miss. 2011).

Trial court did not err in denying defendant's motion for a directed verdict because there was sufficient evidence for a reasonable juror to find defendant guilty of being a convicted felon in possession of a firearm, in violation of Miss. Code Ann. § 97-37-5(1); the State met its burden of proof based on a police officer's testimony, coupled with the fact that the gun was recovered where the officer had seen defendant drop it. Conner v. State, 45 So. 3d 300, 2010 Miss. App. LEXIS 546 (Miss. Ct. App. 2010).

Circuit court properly denied defendant's motion for a new trial based on defendant's argument that the guilty verdicts were based on insufficient evidence and/or were contrary to law or the weight of the evidence because: (1) allowing the conviction for convicted-felon-in-possession-of-firearm charge in violation of Miss. Code Ann. § 97-37-5(1) (Rev. 2006) to stand would not have been prejudicial to defendant since all of the evidence pointed to defendant, a prior convicted felon, being in possession of a firearm while not under duress, a conclusion that could have been reached by any rational juror; and (2) since there was conflicting testimony in the case, reasonable and fairminded jurors in the exercise of impartial judgment could have reached different conclusions as to the verdict, thus resulting in the appellate court's finding that there was legally sufficient evidence to convict defendant of motor-vehicle theft Miss. Code Ann. § 97-17-42(1) (Rev. 2006). Davis v. State, 18 So. 3d 842, 2009 Miss. LEXIS 475 (Miss. 2009).

Where defendant disarmed his victim and fired the gun in the victim's direction and into a crowded nightclub, killing the victim and another and wounding three others, the trial court did not err in denying defendant's motion for a judgment notwithstanding the verdict because the evidence was sufficient to support defendant's convictions of murder, aggravated assault, and felon in possession of a firearm. Roberson v. State, 19 So. 3d 95, 2009 Miss. App. LEXIS 98 (Miss. Ct. App. 2009).

Defendant's conviction for possession of a firearm by a convicted felon in violation of Miss. Code Ann. § 97-37-5(1) was appropriate because defendant had been previously convicted of a felony and two witnesses testified that defendant was in possession of no less than three pistols. It was for the jury to decide whether to believe or disbelieve the testimony of those two witnesses. Vickers v. State, 994 So. 2d 200, 2008 Miss. App. LEXIS 208 (Miss. Ct. App.), cert. denied, 998 So. 2d 1010, 2008 Miss. LEXIS 675 (Miss. 2008).

Evidence was sufficient to show defendant was a felon in possession of a firearm when witnesses testified that they saw defendant retrieve a rifle and load the rifle; thereafter, the witnesses said defendant followed someone outside and gunshots were heard. Moreover, a records clerk testified that she had been subpoenaed to produce certain court documents, which showed, among other things, social security numbers and that defendant had been convicted of a felony. Hicks v. State, 973 So. 2d 211, 2007 Miss. LEXIS 693 (Miss. 2007).

There was sufficient additional incriminating evidence for a reasonable juror to find beyond a reasonable doubt that defendant was in constructive possession of the handgun found in his bedroom. Williams v. State, 971 So. 2d 581, 2007 Miss. LEXIS 571 (Miss. 2007).

Evidence was sufficient to convict defendant of being a felon in possession of a firearm where defendant's prior felony conviction was not at issue and witnesses testified that defendant was seen shooting a firearm into the ground; witness credibility was for the jury to decide. Edwards v. State, 966 So. 2d 837, 2007 Miss. App. LEXIS 666 (Miss. Ct. App. 2007).

Evidence was sufficient to sustain defendant's convictions for aggravated assault, kidnapping, and unlawful possession of a firearm where, according to the victim's testimony, she was accosted by defendant who grabbed her, placed a gun to her head, and physically forced her into a van against her will; an eyewitness testified that he saw the victim jump out of the van and saw the van swing back in such a fashion so as to accomplish a "perfect hit" on the woman in flight. In addition, the State presented two witnesses attesting to the fact that defendant was in possession of a firearm, and it introduced the gun into evidence with additional proof that the gun was recovered when defendant was arrested. Jones v. State, 920 So. 2d 465, 2006 Miss. LEXIS 65 (Miss. 2006).

Evidence was sufficient to support defendant's conviction for possession of a firearm by a felon when witnesses testified that defendant pointed a gun, a witness testified defendant fired shots, a 911 dispatcher heard someone say, "put the gun down," and police found guns inside a trailer where defendant had been; the jury was the arbiter of conflicting evidence when two witnesses recanted their original statements. Townsend v. State, 939 So. 2d 796, 2006 Miss. LEXIS 552 (Miss. 2006).

There was sufficient evidence to sustain a conviction for possession of a firearm by a felon under Miss. Code Ann. § 97-37-5(1) based on the fact that defendant was found with a gun in his waistband; it was irrelevant that he was not seen shooting the gun, and the jury could have disbelieved his self-defense claim or found that he retained the weapon for a significant period after the danger had passed. Hatten v. State, 938 So. 2d 365, 2006 Miss. App. LEXIS 697 (Miss. Ct. App. 2006).

Sufficient evidence existed to convict the defendant for being a felon in possession of a firearm in violation of Miss. Code Ann. § 97-37-5(1) as (1) the State presented a "pen pac" which revealed that defendant had been previously convicted of grand larceny and pled guilty to manslaughter at different times, (2) defendant knew he could not possess a gun, and (3) the gun was located in the bedroom occupied by defendant and his wife. Koger v. State, 919 So. 2d 1058, 2005 Miss. App. LEXIS 455 (Miss. Ct. App. 2005).

Sufficient evidence supported defendant's conviction for possession of a firearm by a felon under Miss. Code Ann. § 97-37-5(1) because the evidence was sufficient to show defendant was intentionally and consciously in possession of the weapon on the day charged. Defendant admitted that she had previously been convicted of a felony and that she knew that the weapon belonged to her ex-husband, that it had been reported stolen, and that she was required to return it if she found it in her home after their divorce, but that she had not yet returned it. Young v. State, 908 So. 2d 819, 2005 Miss. App. LEXIS 445 (Miss. Ct. App. 2005).

Defendant's convictions for murder and for being a felon in the possession of a firearm were proper where he admitted during cross-examination that he lied when he was interrogated by police. Further, the State produced witnesses who testified that defendant had a gun in his possession before the shooting and that defendant was angry and desired to get even with the victim. Hayes v. State, 907 So. 2d 385, 2005 Miss. App. LEXIS 114 (Miss. Ct. App.), cert. denied, 910 So. 2d 574, 2005 Miss. LEXIS 451 (Miss. 2005).

Where police recovered a handgun directly behind defendant's house and the gun was identified as the one used by defendant to shoot at his girlfriend, defendant was properly convicted of possession of a firearm by a convicted felon. He was sentenced to three years in the custody of the Mississippi Department of Corrections. Griffin v. State, 883 So. 2d 1201, 2004 Miss. App. LEXIS 965 (Miss. Ct. App. 2004).

Where defendant's wife testified that defendant killed her ex-boyfriend, set his house on fire, and threw the pistol into the Tennessee River, the evidence was sufficient to convict defendant of murder, arson, and possession of a firearm by a felon. A diver recovered the pistol pieces from the river; the trial court properly denied defendant's motion for judgment notwithstanding the verdict. Roland v. State, 882 So. 2d 262, 2004 Miss. App. LEXIS 911 (Miss. Ct. App. 2004).

In defendant's trial for resisting arrest and possession of a firearm by a convicted felon, defendant's motion for new trial was properly denied where the arresting officers both testified that defendant pointed a chrome-colored pistol at them during the initial struggle, a third officer testified to finding a chrome-colored pistol in residents' yard near the scene of the altercation, and the resident testified to having heard an object hit the roof about the time of the incident. Harvey v. State, 875 So. 2d 1133, 2004 Miss. App. LEXIS 602 (Miss. Ct. App. 2004).

In a guilty plea of manslaughter and possession of a firearm by a convicted felon, the record lacked any evidence that defendant presented himself as anything but mentally competent and there was no evidence to indicate that defendant's attorney was on notice of any psychiatric problem or that defendant's mind was or could be impaired; thus, there was no basis for defendant's attorney to request a mental evaluation for defendant, he was not incompetent for failing to request a mental evaluation for defendant, and defendant's motion for post-conviction relief was properly denied. Richardson v. State, 856 So. 2d 758, 2003 Miss. App. LEXIS 946 (Miss. Ct. App. 2003).

In a guilty plea of manslaughter and possession of a firearm by a convicted felon, defendant testified under oath that he understood what he was doing and that his mind was clear, and, additionally, he did not produce any supporting affidavits to the appellate court to establish his alleged mental deficiency, as required by Miss. Code Ann. § 99-39-9(1)(e); thus, the trial judge did not abuse her discretion in not ordering, upon her own motion, a psychiatric evaluation of defendant pursuant to Miss. Code Ann. § 99-13-11 because she determined that the accused was competent to understand the nature of the charges as required by Miss. Unif. Cir. & County Ct. Prac. R. 8.04(4)(a) and defendant's motion for post-conviction relief was denied. Richardson v. State, 856 So. 2d 758, 2003 Miss. App. LEXIS 946 (Miss. Ct. App. 2003).

In a guilty plea of manslaughter and possession of a firearm by a convicted felon, defendant was fully informed of the nature of the charge against him, the rights he would waive by pleading guilty, and the maximum sentence he could receive, and he expressed full satisfaction with his attorney, denying that he had been coerced into pleading guilty; thus, defendant entered his plea voluntarily, knowingly, and intelligently and his motion for post-conviction relief was properly denied. Richardson v. State, 856 So. 2d 758, 2003 Miss. App. LEXIS 946 (Miss. Ct. App. 2003).

There was sufficient evidence presented to support defendant's conviction for possession of a firearm by a felon because defendant had been convicted of at least two separate felonies arising out of different incidents, defendant owed a laser sighted weapon, and a clip for the weapon was found under the seat where defendant had been riding. Crosby v. State, 856 So. 2d 523, 2003 Miss. App. LEXIS 403 (Miss. Ct. App.), cert. denied, 860 So. 2d 1223, 2003 Miss. LEXIS 814 (Miss. 2003).

Evidence was sufficient to support defendant's convicted felon in possession of firearm conviction, because defendant admitted he was a convicted felon; a woman who called the police testified that she saw that defendant had a gun in his hand; and an officer testified that he saw defendant walk toward the front of a nearby vehicle, take his hand from his pocket and make a stopping movement and then kicking movement with his foot, and later found a gun under the vehicle. McNulty v. State, 847 So. 2d 274, 2003 Miss. App. LEXIS 494 (Miss. Ct. App. 2003).

10. "Convicted felon."

Where an inmate argued that counsel was ineffective in allowing the inmate to plead guilty to being a felon in possession of a deadly weapon when the prior conviction was based upon a California nolo contendere plea to a marijuana possession charge, which the inmate argued could not be used against the inmate in the Mississippi charges, the inmate failed to establish a prima facie case of ineffective assistance of counsel because, inter alia, the inmate admitted on the record that he had been convicted of a felony. Knight v. State, 983 So. 2d 348, 2008 Miss. App. LEXIS 145 (Miss. Ct. App.), cert. denied, 981 So. 2d 298, 2008 Miss. LEXIS 267 (Miss. 2008), cert. denied, 555 U.S. 998, 129 S. Ct. 492, 172 L. Ed. 2d 363, 2008 U.S. LEXIS 8079 (U.S. 2008).

11. Directed verdict.

Where a witness testified that defendant had a shotgun underneath his car seat, he was convicted of possession of a firearm by a convicted felon under Miss. Code Ann. § 97-37-5(1); the trial court did not err by denying defendant's motion for a directed verdict, because he presented no evidence to show that the shotgun was inoperable. By his own admission, the shotgun worked; furthermore, Miss. Code Ann. § 97-37-5(1) did not require the State to prove that the weapon was operable. Cooley v. State, 14 So. 3d 63, 2008 Miss. App. LEXIS 701 (Miss. Ct. App. 2008).

12. Double jeopardy.

Although defendant claimed that his indictment as a habitual offender along with the imposed sentence enhancement constituted double jeopardy, sentencing under Miss. Code Ann. §§ 97-37-5, 97-37-37(2) presented no double-jeopardy concern. Billups v. State, 270 So. 3d 917, 2018 Miss. App. LEXIS 461 (Miss. Ct. App. 2018).

In a case involving multiple counts of being a felon in possession of a firearm, no plain error was shown because a trial court did not deviate from or misapply a legal rule in a plain, clear, and obvious way; a double jeopardy argument had not been raised or discussed in prior cases involving multiple counts of this offense. Green v. State, 183 So. 3d 28, 2016 Miss. LEXIS 43 (Miss. 2016).

State was not collaterally estopped under the Double Jeopardy Clause of the Fifth Amendment from trying appellant for possession of a weapon by a convicted felon because whether appellant was in possession of a weapon was never litigated and resolved in his favor; appellant was not acquitted based on the jury's finding he had no weapon in his possession, but instead, he was merely permitted by the circuit court to plead guilty to the lesser-included charge of simple stalking. Johnson v. State, 159 So. 3d 601, 2014 Miss. App. LEXIS 667 (Miss. Ct. App. 2014).

Same elements test did not apply because the statute is a sentence enhancement, not a separate crime, and thus defendant's double jeopardy claim related to his conviction of possession of a firearm by a felon was without merit. Stewart v. State, 131 So. 3d 569, 2014 Miss. LEXIS 87 (Miss. 2014).

Defendant's sentence under Miss. Code Ann. §§ 97-37-5(1) and 97-37-37(2) was proper; section 97-37-37(2) merely imposes an elevated sentence for use or display of a firearm during the commission of a felony, and it does not delineate an independent substantive offense in violation of double jeopardy protections. Lewis v. State, 112 So. 3d 1092, 2013 Miss. App. LEXIS 220 (Miss. Ct. App. 2013).

As a conviction of possession of a firearm by a convicted felon (Miss. Code Ann. § 97-37-5) required proof of a prior felony, while conviction of carrying a concealed weapon (Miss. Code Ann. § 97-37-1) required proof that the weapon be concealed, each offense had an element not present in the other; therefore, defendant's conviction of both charges did not violate the double jeopardy ban. Wilson v. State, 95 So. 3d 1282, 2012 Miss. App. LEXIS 538 (Miss. Ct. App. 2012).

13. New trial.

Defendant was not entitled to a new trial on a felony possession charge since the jury was entitled to believe the victim's testimony that defendant had a gun on his person when he came outside, and that defendant produced the gun and shot him; the finding that defendant willfully possessed the firearm with which he shot the victim was supported by the victim's testimony, and officer one's testimony that he saw defendant holding the gun. Gilmore v. State, 119 So. 3d 278, 2013 Miss. LEXIS 361 (Miss. 2013).

14. Weight of the evidence.

Jury's verdicts finding defendant guilty of murder, aggravated assault, and possession of a firearm by a felon were not contrary to the overwhelming weight of the evidence because the victim, who identified defendant as the shooter, had just finished speaking with defendant when he was shot in the arm; the victim testified, and the jury obviously believed, that he was unable to identify the shooter while he was in the hospital because he was on Morphine and in a lot of pain. Johnson v. State, 281 So. 3d 1221, 2019 Miss. App. LEXIS 206 (Miss. Ct. App. 2019).

Trial court did not err by finding the jury's verdict finding defendant guilty of possession of a firearm by a convicted felon was not against the overwhelming weight of the evidence because defendant stipulated his felony conviction prohibited him from possessing firearms; officers testified about their pursuit leading to one of the officers seeing defendant possessing and throwing a pistol, and the other officer recovered the firearm from that area. Williams v. State, 285 So. 3d 156, 2019 Miss. LEXIS 397 (Miss. 2019).

15. Ineffective assistance of counsel.

Defendant's trial counsel was not ineffective for failing to argue that possession was 9/10 the law because possession, which could be either actual or constructive, was an element that had to be proved 100 percent of the time in felon-in-possession cases. Williams v. State, 285 So. 3d 156, 2019 Miss. LEXIS 397 (Miss. 2019).

Defendant's trial counsel was not ineffective for failing to challenge defendant's gun possession the defense argued the only gun in the car belonged to the driver; counsel also called several witnesses, including deefendant himself, to testify he did not possess a gun that day. Williams v. State, 285 So. 3d 156, 2019 Miss. LEXIS 397 (Miss. 2019).

OPINIONS OF THE ATTORNEY GENERAL

Possession of weapon by convicted felon is simply prima facie evidence of violation of statute prohibiting carrying concealed weapon; in order for convicted felon to be able to qualify for gun permit, he could receive governor's pardon or executive order expressly restoring his privilege to obtain gun permit, and provisions of statute would have no application to convicted felon who has received pardon from governor, or who has received executive order expressly placing him outside operation statute. Murphy, Nov. 20, 1992, A.G. Op. #92-0861.

A muzzle loading rifle or a muzzle loading shotgun is within the meaning of the term "firearm" as used in this section. A convicted felon may possess and consequently hunt with a traditional bow and arrow or crossbow. Maples, Feb. 13, 2004, A.G. Op. 04-0043.

The name of one convicted of the crime of receiving stolen property must be removed from the voter rolls. Dill, Apr. 1, 2005, A.G. Op. 05-0145.

Issuance of a certificate of rehabilitation pursuant to Section 97-37-5 only restores the right to possess a weapon and does not remove a conviction and does not allow a convicted felon to be qualified as a candidate for public office. Ramsey, Apr. 1, 2005, A.G. Op. 05-0143.

If the original owner of weapons in the possession of the sheriff is classified as a convicted felon, the weapons should be disposed of according to established legal methods. Welford, Aug. 12, 2005, A.G. Op. 05-0354.

RESEARCH REFERENCES

ALR.

Propriety of using single prior felony conviction as basis for offense of possessing weapon by convicted felon and to enhance sentence. 37 A.L.R.4th 1168.

Sufficiency of evidence as to nature of firearm in prosecution under state statute prohibiting persons under indictment for, or convicted of, crime from acquiring, having, carrying, or using firearms. 37 A.L.R.4th 1179.

Sufficiency of evidence of possession in prosecution under state statute prohibiting persons under indictment for, or convicted of, crime from acquiring, having, carrying, or using firearms or weapons. 43 A.L.R.4th 788.

Validity of state statute proscribing possession or carrying of knife. 47 A.L.R.4th 651.

What amounts to "control" under state statute making it illegal for felon to have possession or control of firearm or other dangerous weapon. 66 A.L.R.4th 1240.

Fact that gun was broken, dismantled, or inoperable as affecting criminal responsibility under weapons statute. 81 A.L.R.4th 745.

What constitutes "constructive possession" of unregistered or otherwise prohibited weapon under state law. 88 A.L.R.5th 121.

Validity of State Gun Control Legislation Under State Constitutional Provisions Securing Right to Bear Arms – Convicted Felons. 85 A.L.R.6th 641.

Petition for relief, under 18 USCS § 925(c) and implementing regulations, from disabilities imposed by federal gun control laws upon persons convicted of crime. 66 A.L.R. Fed. 351.

What constitutes receipt of firearm, under 18 USCS § 922(h), prohibiting certain persons from receiving any firearm which has been shipped or transported in interstate or foreign commerce. 74 A.L.R. Fed. 486.

§ 97-37-7. Deadly weapons; persons permitted to carry weapons; bond; permit to carry weapon; grounds for denying application for permit; required weapons training course; reciprocal agreements.

(1)(a) It shall not be a violation of Section 97-37-1 or any other statute for pistols, firearms or other suitable and appropriate weapons to be carried by duly constituted bank guards, company guards, watchmen, railroad special agents or duly authorized representatives who are not sworn law enforcement officers, agents or employees of a patrol service, guard service, or a company engaged in the business of transporting money, securities or other valuables, while actually engaged in the performance of their duties as such, provided that such persons have made a written application and paid a nonrefundable permit fee of One Hundred Dollars ($100.00) to the Department of Public Safety.

(b) No permit shall be issued to any person who has ever been convicted of a felony under the laws of this or any other state or of the United States. To determine an applicant's eligibility for a permit, the person shall be fingerprinted. If no disqualifying record is identified at the state level, the fingerprints shall be forwarded by the Department of Public Safety to the Federal Bureau of Investigation for a national criminal history record check.

The department shall charge a fee which includes the amounts required by the Federal Bureau of Investigation and the department for the national and state criminal history record checks and any necessary costs incurred by the department for the handling and administration of the criminal history background checks. In the event a legible set of fingerprints, as determined by the Department of Public Safety and the Federal Bureau of Investigation, cannot be obtained after a minimum of three (3) attempts, the Department of Public Safety shall determine eligibility based upon a name check by the Mississippi Highway Safety Patrol and a Federal Bureau of Investigation name check conducted by the Mississippi Highway Safety Patrol at the request of the Department of Public Safety.

(c) A person may obtain a duplicate of a lost or destroyed permit upon payment of a Fifteen Dollar ($15.00) replacement fee to the Department of Public Safety, if he furnishes a notarized statement to the department that the permit has been lost or destroyed.

(d)(i) No less than ninety (90) days prior to the expiration date of a permit, the Department of Public Safety shall mail to the permit holder written notice of expiration together with the renewal form prescribed by the department. The permit holder shall renew the permit on or before the expiration date by filing with the department the renewal form, a notarized affidavit stating that the permit holder remains qualified, and the renewal fee of Fifty Dollars ($50.00); honorably retired law enforcement officers shall be exempt from payment of the renewal fee. A permit holder who fails to file a renewal application on or before its expiration date shall pay a late fee of Fifteen Dollars ($15.00).

(ii) Renewal of the permit shall be required every four (4) years. The permit of a qualified renewal applicant shall be renewed upon receipt of the completed renewal application and appropriate payment of fees.

(iii) A permit cannot be renewed six (6) months or more after its expiration date, and such permit shall be deemed to be permanently expired; the holder may reapply for an original permit as provided in this section.

(2) It shall not be a violation of this or any other statute for pistols, firearms or other suitable and appropriate weapons to be carried by Department of Wildlife, Fisheries and Parks law enforcement officers, railroad special agents who are sworn law enforcement officers, investigators employed by the Attorney General, criminal investigators employed by the district attorneys, all prosecutors, public defenders, investigators or probation officers employed by the Department of Corrections, employees of the State Auditor who are authorized by the State Auditor to perform investigative functions, or any deputy fire marshal or investigator employed by the State Fire Marshal, while engaged in the performance of their duties as such, or by fraud investigators with the Department of Human Services, or by judges of the Mississippi Supreme Court, Court of Appeals, circuit, chancery, county, justice and municipal courts, or by coroners. Before any person shall be authorized under this subsection to carry a weapon, he shall complete a weapons training course

approved by the Board of Law Enforcement Officer Standards and Training. Before any criminal investigator employed by a district attorney shall be authorized under this section to carry a pistol, firearm or other weapon, he shall have complied with Section 45-6-11 or any training program required for employment as an agent of the Federal Bureau of Investigation. A law enforcement officer, as defined in Section 45-6-3, shall be authorized to carry weapons in courthouses in performance of his official duties. A person licensed under Section 45-9-101 to carry a concealed pistol, who (a) has voluntarily completed an instructional course in the safe handling and use of firearms offered by an instructor certified by a nationally recognized organization that customarily offers firearms training, or by any other organization approved by the Department of Public Safety, (b) is a member or veteran of any active or reserve component branch of the United States of America Armed Forces having completed law enforcement or combat training with pistols or other handguns as recognized by such branch after submitting an affidavit attesting to have read, understand and agree to comply with all provisions of the enhanced carry law, or (c) is an honorably retired law enforcement officer or honorably retired member or veteran of any active or reserve component branch of the United States of America Armed Forces having completed law enforcement or combat training with pistols or other handguns, after submitting an affidavit attesting to have read, understand and agree to comply with all provisions of Mississippi enhanced carry law shall also be authorized to carry weapons in courthouses except in courtrooms during a judicial proceeding, and any location listed in subsection (13) of Section 45-9-101, except any place of nuisance as defined in Section 95-3-1, any police, sheriff or highway patrol station or any detention facility, prison or jail. For the purposes of this subsection (2), component branch of the United States Armed Forces includes the Army, Navy, Air Force, Coast Guard or Marine Corps, or the Army National Guard, the Army National Guard of the United States, the Air National Guard or the Air National Guard of the United States, as those terms are defined in Section 101, Title 10, United States Code, and any other reserve component of the United States Armed Forces enumerated in Section 10101, Title 10, United States Code. The department shall promulgate rules and regulations allowing concealed pistol permit holders to obtain an endorsement on their permit indicating that they have completed the aforementioned course and have the authority to carry in these locations. This section shall in no way interfere with the right of a trial judge to restrict the carrying of firearms in the courtroom.

For purposes of this subsection (2), the following words shall have the meanings described herein, unless the context otherwise requires:

(i) "Courthouse" means any building in which a circuit court, chancery court, youth court, municipal court, justice court or any appellate court is located, or any building in which a court of law is regularly held.

(ii) "Courtroom" means the actual room in which a judicial proceeding occurs, including any jury room, witness room, judge's chamber, office housing the judge's staff, or similar room. "Courtroom" shall not mean hallways, courtroom entrances, courthouse grounds, lobbies, corridors, or other areas within a courthouse which are generally open to the public for the transaction of business outside of an active judicial proceeding, the grassed areas, cultivated flower beds, sidewalks, parking lots, or other areas contained within the boundaries of the public land upon which the courthouse is located.

(3) It shall not be a violation of this or any other statute for pistols, firearms or other suitable and appropriate weapons, to be carried by any out-of-state, full-time commissioned law enforcement officer who holds a valid commission card from the appropriate out-of-state law enforcement agency and a photo identification. The provisions of this subsection shall only apply if the state where the out-of-state officer is employed has entered into a reciprocity agreement with the state that allows full-time commissioned law enforcement officers in Mississippi to lawfully carry or possess a weapon in such other states. The Commissioner of Public Safety is authorized to enter into reciprocal agreements with other states to carry out the provisions of this subsection.

HISTORY: Codes, 1880, § 2985; 1892, § 1026; 1906, § 1103; Hemingway's 1917, § 829; 1930, § 853; 1942, § 2079; Laws, 1898, p. 86; Laws, 1960, ch. 242, § 1; Laws, 1962, ch. 310, § 1; Laws, 1973, ch. 437, § 1; Laws, 1974, ch. 323 § 1; Laws, 1981, ch. 415, § 1; Laws, 1986, ch. 372; Laws, 1990, ch. 483, § 1; Laws, 1991, ch. 609, § 5; Laws, 1995, ch. 534, § 1; Laws, 1998, ch. 472, § 1; Laws, 2000, ch. 439, § 1; Laws, 2001, ch. 566, § 2; Laws, 2002, ch. 577, § 1; Laws, 2008, ch. 319, § 6; Laws, 2011, ch. 338, § 1; Laws, 2011, ch. 535, § 1; Laws, 2015, ch. 433, § 1, eff from and after passage (approved Apr. 9, 2015); Laws, 2019, ch. 313, § 1, eff from and after July 1, 2019.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (2)(c). The word "an" was inserted following "handguns, after submitting." The Joint Committee ratified the correction at its August 17, 2015, meeting.

Editor's Notes — Executive Order No. 1474, I., issued by Governor Tate Reeves on April 20, 2020, provides as follows:

"I. In order to cope with and respond to the COVID-19 emergency, pursuant to Miss. Code Ann. § 33-15-11(c)(1), the provisions of Miss. Code Ann. §§ 63-1-47, 63-1-6, 63-1-21, 45-9-101, 97-37-7, and 45-35-55 are hereby suspended to the extent necessary to delay the expiration of all valid driver's licenses, learner's permits, intermediate licenses, firearm permits, security guard permits and ID cards set to expire between March 14-2020 and June 30, 2020. Such licenses, permits and ID cards will instead expire on August 3, 2020."

Laws of 2008, ch. 319, § 1, provides:

"SECTION 1. This act shall be known as the 'Justice Court Reform Act of 2008.' "

On July 24 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2008, ch. 319, § 6.

Laws of 2011, ch. 535, § 3, provides:

"SECTION 3. It is the intent of the Legislature that the amendments contained in Section 1 of this act shall be integrated with the amendments to Section 97-37-7, Mississippi Code of 1972, contained in House Bill No. 506 [ch. 338], 2011 Regular Session, without regard to the effective dates of passage of those acts."

Amendment Notes — The 2019 amendment added the last paragraph of (2).

Cross References — Private information of persons possessing a weapon permit issued under this section or Section 45-9-101 exempt from Mississippi Public Records Act, see § 25-61-11.1.

Department of Wildlife, Fisheries and Parks generally, see §§ 49-4-1 et seq.

Authority of agents and inspectors of the alcoholic beverage control division to bear arms, see § 67-1-31.

Right of railroad police officers to bear firearms, see § 77-9-505.

Other sections derived from same 1942 code section, see §§ 97-37-1, 97-37-3, 97-37-5.

Federal Aspects— Federal Bureau of Investigation generally, see 28 USCS §§ 531 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Sheriff has authority, in his discretion, to issue permit to guards or watchmen to carry firearms while on duty. McMullen, July 22, 1992, A.G. Op. #92-0482.

This section allows permit for carrying concealed weapons by security guards, bank guards, etc. Bowen, Jan. 14, 1993, A.G.Op #92-0934.

A permit obtained from the Commissioner under either Section 45-9-101 or this section obviates the need to obtain a permit from the Sheriff. Pope, August 2, 1996, A.G. Op. #96-0491.

A park ranger for the Pat Harrison Waterway District is not authorized to carry firearms, and even if such a ranger is also deputized as a Deputy Sheriff, the authority to carry a firearm does not extend to actions taken while serving in the capacity of a park ranger. Mathews, July 11, 1997, A.G. Op. #97-0390.

RESEARCH REFERENCES

ALR.

Scope and effect of exception, in statute forbidding carrying of weapons, as to person on his own premises or at his place of business. 57 A.L.R.3d 938.

Validity of state statute proscribing possession or carrying of knife. 47 A.L.R.4th 651.

What constitutes receipt of firearm, under 18 USCS § 922(h), prohibiting certain persons from receiving any firearm which has been shipped or transported in interstate or foreign commerce. 74 A.L.R. Fed. 486.

§ 97-37-9. Deadly weapons; defenses against indictment for carrying deadly weapon.

Any person indicted or charged for a violation of Section 97-37-1 may show as a defense:

(a) That he was threatened, and had good and sufficient reason to apprehend a serious attack from any enemy, and that he did so apprehend; or

(b) That he was traveling and was not a tramp, or was setting out on a journey and was not a tramp; or

(c) That he was a law enforcement or peace officer in the discharge of his duties; or

(d) That he was at the time in the discharge of his duties as a mail carrier; or

(e) That he was at the time engaged in transporting valuables for an express company or bank; or

(f) That he was a member of the Armed Forces of the United States, National Guard, State Militia, Emergency Management Corps, guard or patrolman in a state or municipal institution while in the performance of his official duties; or

(g) That he was in lawful pursuit of a felon; or

(h) That he was lawfully engaged in legitimate sports;

(i) That at the time he was a company guard, bank guard, watchman, or other person enumerated in Section 97-37-7, and was then actually engaged in the performance of his duties as such, and then held a valid permit from the sheriff, the commissioner of public safety, or a valid permit issued by the Secretary of State prior to May 1, 1974, to carry the weapon; and the burden of proving either of said defenses shall be on the accused; or

(j) That at the time he or she was a member of a church or place of worship security program, and was then actually engaged in the performance of his or her duties as such and met the requirements of Section 45-9-171.

HISTORY: Codes, 1892, § 1027; 1906, § 1105; Hemingway's 1917, § 831; 1930, § 855; 1942, § 2081; Laws, 1912, ch. 210; Laws, 1960, ch. 242, § 2; Laws, 1962, ch. 310, § 2; Laws, 1974, ch. 323, § 2; Laws, 1980, ch. 491, § 26; Laws, 2016, ch. 421, § 3, eff from and after passage (approved Apr. 15, 2016).

Cross References — Authority of agents and inspectors of the alcoholic beverage control division to bear arms, see § 67-1-31.

JUDICIAL DECISIONS

ANALYSIS

1. Apprehension of attack.
2. Carrying while traveling.
3. Peace officers.
4. Burden of proof.
5. Instructions.
6. —Peremptory instructions.

1. Apprehension of attack.

Whether the carrying of a weapon is justified by threats and is in good faith is a jury question. Morgan v. Heidelberg, 246 Miss. 481, 150 So. 2d 512, 1963 Miss. LEXIS 468 (Miss. 1963).

Where, in defense of indictment for carrying concealed weapon, defendant proved that he apprehended attack, conviction could not be had on evidence that defendant had exhibited weapon in rude, angry, or threatening manner. Talley v. State, 174 Miss. 349, 164 So. 771, 1935 Miss. LEXIS 90 (Miss. 1935).

In prosecution for carrying concealed weapon, defendant held entitled to show reason for and purpose of carrying weapon concealed. Loggins v. State, 161 Miss. 272, 136 So. 922, 1931 Miss. LEXIS 262 (Miss. 1931).

Where defendant claimed he was carrying pistol because another had threatened him, evidence regarding reasons for threat held incompetent. Sullivan v. State, 156 Miss. 718, 126 So. 646, 1930 Miss. LEXIS 210 (Miss. 1930).

Not necessary that pistol carried in anticipation of attack be loaded or usable. Thomas v. Tupelo, 133 Miss. 166, 97 So. 522, 1923 Miss. LEXIS 117 (Miss. 1923).

Sufficient defense to charge of carrying deadly weapon to show apprehension of attack by one making threats. Huffstickler v. State, 129 Miss. 769, 93 So. 1, 1922 Miss. LEXIS 86 (Miss. 1922).

One threatened with attack may carry a concealed weapon, though he does not anticipate the attack at a particular time and place; and he need not disarm himself whenever he is temporarily so situated that for the time being he is in no immediate danger. Harvey v. State, 102 Miss. 544, 59 So. 841, 1912 Miss. LEXIS 85 (Miss. 1912).

Under paragraph (a) that a person accused of carrying a deadly weapon was informed that he had been threatened, and had good reason to apprehend an attack, constitutes a defense, and testimony of witness telling accused of threats was competent. Hurst v. State, 101 Miss. 402, 58 So. 206, 1912 Miss. LEXIS 8 (Miss. 1912).

Good faith of accused person in carrying deadly weapon after threats is a question for the jury. Hurst v. State, 101 Miss. 402, 58 So. 206, 1912 Miss. LEXIS 8 (Miss. 1912).

That defendant had been informed of threats of violence made against him, which he had reasonable grounds to believe in, is a defense to a prosecution for carrying concealed a deadly weapon. Page v. State, 99 Miss. 72, 54 So. 725, 1910 Miss. LEXIS 15 (Miss. 1910).

Accused's testimony that on a previous night there had been a disturbance among the chickens on his premises and he believed one or two chickens had been stolen, and that on an earlier occasion a window in his home had been broken, was too indefinite to constitute a defense to charge of carrying a concealed pistol since it was not shown that the breaking of the window had anything to do with the disturbance of the chickens, and it was not proved that any chickens had been stolen. Wilson v. State, 81 Miss. 404, 33 So. 171, 1902 Miss. LEXIS 159 (Miss. 1902).

This statute [Code 1942, § 2081] requires the apprehension of bodily harm, which constitutes a defense, to be the apprehension of great bodily harm. Strother v. State, 74 Miss. 447, 21 So. 147, 1896 Miss. LEXIS 154 (Miss. 1896).

One threatened with an attack may lawfully carry a concealed weapon, although the attack be not threatened to be made at a particular time or on a particular occasion. Suddith v. State, 70 Miss. 250, 11 So. 680, 1892 Miss. LEXIS 68 (Miss. 1892).

The threats must not be too remote. McGuirk v. State, 64 Miss. 209, 1 So. 103, 1886 Miss. LEXIS 45 (Miss. 1886).

Even if the accused be "threatened" and entertain the "apprehension," it will be no defense if he carried the weapon for some other reason, and for some other purpose. McGuirk v. State, 64 Miss. 209, 1 So. 103, 1886 Miss. LEXIS 45 (Miss. 1886).

"Threatened with an attack" does not contemplate mere denunciation, but menace such as to cause a reasonable apprehension of an attack that might properly be resisted with the deadly weapon. Tipler v. State, 57 Miss. 685, 1880 Miss. LEXIS 38 (Miss. 1880).

2. Carrying while traveling.

In a prosecution for carrying a concealed weapon, the defendant was authorized by statute to carry a weapon, whether concealed or not, where the evidence showed that he had about $100 on his person, and was therefore not a tramp, and was transporting a large amount of valuable musical equipment a distance of 85 miles for the purpose of conducting a record hop as a disc jockey. Joseph v. State, 299 So. 2d 211, 1974 Miss. LEXIS 1586 (Miss. 1974).

Where a defendant was able to show without contradiction that he was traveling on a gravel road through a wooded area, at the time when an officer stopped him and asked to see his driver's license, and then, upon observing a ceremonial sword in the defendant's automobile, conducted a thorough search of the automobile which disclosed a loaded revolver in the unlocked glove compartment, and further testified without contradiction that he was a longtime citizen of the county and not a tramp, he made a complete defense to the charge of carrying a concealed weapon, under the specific provisions of this section [Code 1942, § 2081]. Jefferson v. State, 241 So. 2d 679, 1970 Miss. LEXIS 1364 (Miss. 1970).

A person, not a tramp, traveling 62 miles from his place of residence, beyond the circle of his friends in the pursuit of legitimate business, and having a substantial sum of money on his person, is not guilty of unlawfully carrying a concealed weapon. Patterson v. State, 251 Miss. 565, 170 So. 2d 635, 1965 Miss. LEXIS 883 (Miss. 1965).

Traveler carrying concealed weapon ten miles from home, and who was unacquainted with people living between home and place to which he was traveling, and who was carrying weapon for purpose of protection, held not guilty of offense of carrying concealed weapon. Basham v. Sebastopol, 172 Miss. 194, 159 So. 847, 1935 Miss. LEXIS 134 (Miss. 1935).

A person ceases to be a traveler within the meaning of this section [Code 1942, § 2081] when he reaches the point of his destination and engages a room at a boarding house or hotel, intending to stay an indefinite time and to return home only after the business for which he made the journey is completed. Rosaman v. Okolona, 85 Miss. 583, 37 So. 641, 1904 Miss. LEXIS 138 (Miss. 1904).

The pursuit of a fugitive daughter begun without knowing where it will lead to is "traveling on a journey." Heywood v. State, 66 Miss. 402, 6 So. 237, 1889 Miss. LEXIS 115 (Miss. 1889).

The "traveling or setting out on a journey" in the statute means a travel of some distance as to take one beyond the circle of his friends and acquaintances. McGuirk v. State, 64 Miss. 209, 1 So. 103, 1886 Miss. LEXIS 45 (Miss. 1886); Morgan v. Heidelberg, 246 Miss. 481, 150 So. 2d 512, 1963 Miss. LEXIS 468 (Miss. 1963).

3. Peace officers.

This section [Code 1942, § 2081] authorizes a deputy United States marshal, while executing criminal process in this state and also in his district, to carry a concealed weapon. State v. Williams, 72 Miss. 992, 18 So. 486, 1895 Miss. LEXIS 68 (Miss. 1895).

The revised statutes of the United States § 788 authorizes a deputy marshal executing criminal process in his district, to carry concealed weapons. State v. Williams, 72 Miss. 992, 18 So. 486, 1895 Miss. LEXIS 68 (Miss. 1895).

4. Burden of proof.

A defendant charged with carrying a concealed weapon has the burden of establishing as a defense that he was traveling and was not a tramp, or was setting out on a journey and was not a tramp. Bush v. Mississippi Employment Sec. Com., 184 So. 2d 866, 1966 Miss. LEXIS 1489 (Miss. 1966).

One charged with carrying deadly weapons has burden of establishing defense of threats and apprehension of attack. Huffstickler v. State, 129 Miss. 769, 93 So. 1, 1922 Miss. LEXIS 86 (Miss. 1922); Garland v. State, 130 Miss. 310, 94 So. 210, 1922 Miss. LEXIS 207 (Miss. 1922).

Burden on one accused of carrying concealed weapons to show apprehended attacks; burden on state to prove accused guilty beyond reasonable doubt. Garland v. State, 130 Miss. 310, 94 So. 210, 1922 Miss. LEXIS 207 (Miss. 1922).

5. Instructions.

In a prosecution for murder, the trial court committed reversible error in refusing a requested defense instruction stating that the defendant had a right to carry a concealed weapon if he had been threatened and had good reason to fear a serious attack from an enemy, and did in fact fear such an attack, where the prosecuting attorney pointed out in his argument before the jury that the victim was not armed, from which the jury might have inferred that the defendant was in the wrong in being armed. Duvall v. State, 634 So. 2d 524, 1994 Miss. LEXIS 140 (Miss. 1994).

In a prosecution for murder the accused is entitled to an instruction as to his right to carry and use a concealed weapon. Ray v. State, 381 So. 2d 1032, 1980 Miss. LEXIS 1930 (Miss. 1980).

Instruction to find accused guilty of carrying a concealed weapon, unless while carrying same 10 miles from home he had good reason to apprehend and did apprehend attack, held too restrictive. Haley v. State, 106 Miss. 358, 63 So. 670, 1913 Miss. LEXIS 142 (Miss. 1913).

Instruction against carrying deadly weapon where accused threatened, held erroneous in view of evidence. Harvey v. State, 102 Miss. 544, 59 So. 841, 1912 Miss. LEXIS 85 (Miss. 1912).

Where the evidence on the trial of an accused for carrying a deadly weapon concealed showed that defendant had been threatened and the threats communicated to her, it is error to ignore the threats and instruct the jury to convict upon the belief that she carried the weapon concealed. Mendin v. State, 82 Miss. 507, 33 So. 944 (Miss. 1903).

6. —Peremptory instructions.

Defendant establishing his defense that he was carrying pistol because of threats held entitled to peremptory instruction requested. Sullivan v. State, 156 Miss. 718, 126 So. 646, 1930 Miss. LEXIS 210 (Miss. 1930).

On disputed evidence that one accused of carrying concealed weapon was making journey beyond neighborhood of his acquaintance, and was not a tramp, he was entitled to peremptory instruction to acquit. McLeod v. State, 140 Miss. 897, 105 So. 757, 1925 Miss. LEXIS 321 (Miss. 1925).

OPINIONS OF THE ATTORNEY GENERAL

This section sets forth certain affirmative defenses to charge of carrying concealed weapon. Bowen, Jan. 14, 1993, A.G. Op. #92-0934.

RESEARCH REFERENCES

ALR.

Offense of carrying concealed weapon as affected by manner of carrying or place of concealment. 43 A.L.R.2d 492.

Statutory presumption of possession of weapon by occupants of place or vehicle where it was found. 87 A.L.R.3d 949.

Validity of state statute proscribing possession or carrying of knife. 47 A.L.R.4th 651.

Am. Jur.

79 Am. Jur. 2d, Weapons and Firearms §§ 20-22.

79 Am. Jur. 2d, Weapon and firearms § 23.

CJS.

94 C.J.S., Weapons §§ 7-10, 12, 14-16, 19.

§ 97-37-11. Repealed.

Repealed by Laws of 2012, ch. 384, § 1, effective from and after passage (approved April 18, 2012).

§ 97-37-11. [Codes, 1906, § 1106; Hemingway's 1917, § 832; 1930, § 856; 1942, § 2082; Laws, 2002, ch. 429, § 1, eff from and after July 1, 2002.]

Editor's Notes — Former § 97-37-11 required dealers to keep records of weapons sold.

§ 97-37-13. Deadly weapons; weapons and cartridges not to be given to minor or intoxicated person.

It shall not be lawful for any person to sell, give or lend to any minor under eighteen (18) years of age or person intoxicated, knowing him to be a minor under eighteen (18) years of age or in a state of intoxication, any deadly weapon, or other weapon the carrying of which concealed is prohibited, or pistol cartridge; and, on conviction thereof, he shall be punished by a fine not more than One Thousand Dollars ($1,000.00), or imprisoned in the county jail not exceeding one (1) year, or both.

HISTORY: Codes, 1880, § 2986; 1892, § 1028; 1906, § 1107; Hemingway's 1917, § 833; 1930, § 857; 1942, § 2083; Laws, 1994, ch. 607, § 8, eff from and after July 2, 1994.

Cross References — Statutory definition of term "infant," see § 1-3-21.
Statutory definition of term "minor," see § 1-3-27.

JUDICIAL DECISIONS

1. In general.

In an action based on common-law negligence and violation of this section and federal statute, discount department store and sales clerk were found liable for injuries sustained by a customer while held hostage by a mentally deranged customer who obtained a pistol, along with ammunition, from the sales clerk who had made no effort to ascertain that the minor customer to whom she was about to deliver a deadly weapon was high on alcohol and drugs. Howard Bros. of Phenix City, Inc. v. Penley, 492 So. 2d 965, 1986 Miss. LEXIS 2528 (Miss. 1986).

RESEARCH REFERENCES

ALR.

Offense of carrying concealed weapon as affected by manner of carrying or place of concealment. 42 A.L.R.2d 492.

Liability for injury or death of minor or other incompetent inflicted upon himself by gun made available by defendant. 75 A.L.R.3d 825.

Liability of one who sells gun to child for injury to third party. 4 A.L.R.4th 331.

Handgun manufacturer's or seller's liability for injuries caused to another by use of gun in committing crime. 44 A.L.R.4th 595.

Fact that gun was unloaded as affecting criminal responsibility. 68 A.L.R.4th 507.

Fact that gun was broken, dismantled, or inoperable as affecting criminal responsibility under weapons statute. 81 A.L.R.4th 745.

Am. Jur.

25 Am. Jur. Pl & Pr Forms (Rev), Weapons and Firearms, Form 26 (complaint, petition or declaration, negligence entrustment of firearm to minor, against firearm owner and minor – including cause of action alleging violation of statute).

25 Am. Jur. Pl & Pr Forms (Rev), Weapons and Firearms Form 37 (Answer, defense, assault firearm stolen from registered owner – Theft reported to law enforcement authorities within time prescribed by assault and weapon control statute).

§ 97-37-14. Possession of handgun by minor; act of delinquency; exceptions.

(1) Except as otherwise provided in this section, it is an act of delinquency for any person who has not attained the age of eighteen (18) years knowingly to have any handgun in such person's possession.

(2) This section shall not apply to:

(a) Any person who is:

(i) In attendance at a hunter's safety course or a firearms safety course; or

(ii) Engaging in practice in the use of a firearm or target shooting at an established range authorized by the governing body of the jurisdiction in which such range is located or any other area where the discharge of a firearm is not prohibited; or

(iii) Engaging in an organized competition involving the use of a firearm, or participating in or practicing for a performance by an organized group under 501(c)(3) as determined by the federal internal revenue service which uses firearms as a part of such performance; or

(iv) Hunting or trapping pursuant to a valid license issued to such person by the Department of Wildlife, Fisheries and Parks or as otherwise allowed by law; or

(v) Traveling with any handgun in such person's possession being unloaded to or from any activity described in subparagraph (i), (ii), (iii) or (iv) of this paragraph (a) and paragraph (b).

(b) Any person under the age of eighteen (18) years who is on real property under the control of an adult and who has the permission of such adult to possess a handgun.

(3) This section shall not apply to any person who uses a handgun or other firearm to lawfully defend himself from imminent danger at his home or place of domicile and any such person shall not be held criminally liable for such use of a handgun or other firearm.

(4) For the purposes of this section, "handgun" means a pistol, revolver or other firearm of any description, loaded or unloaded, from which any shot, bullet or other missile can be discharged, the length of the barrel of which, not including any revolving, detachable or magazine breech, is less than sixteen (16) inches.

HISTORY: Laws, 1994, ch. 595, § 12, eff from and after July 1, 1994.

OPINIONS OF THE ATTORNEY GENERAL

If a gun is not utilized in the act of breaking and entering, the crime would still be in the jurisdiction of the youth court. See Sections 43-21-151 and 97-37-14. Weissinger, October 4, 1995, A.G. Op. #95-0652.

Any lease contract, lease or leasehold must contain a provision which provides that replacement equipment shall be the property of the state in order to meet the requirements of Section 27-31-34 and be exempt from ad valorem taxation. Ross, October 5, 1995, A.G. Op. #95-0651.

RESEARCH REFERENCES

ALR.

What constitutes "constructive possession" of unregistered or otherwise prohibited weapon under state law. 88 A.L.R.5th 121.

Am. Jur.

79 Am. Jur. 2d, Weapons and Firearms § 26.

§ 97-37-15. Parent or guardian not to permit minor son to have or carry weapon; penalty.

Any parent, guardian or custodian who shall knowingly suffer or permit any child under the age of eighteen (18) years to have or to own, or to carry, any weapon the carrying of which concealed is prohibited by Section 97-37-1, shall be guilty of a misdemeanor, and, on conviction, shall be fined not more than One Thousand Dollars ($1,000.00), and shall be imprisoned not more than six

(6) months in the county jail. The provisions of this section shall not apply to a minor who is exempt from the provisions of Section 97-37-14.

HISTORY: Codes, 1880, § 2987; 1892, § 1029; 1906, § 1108; Hemingway's 1917, § 834; 1930, § 858; 1942, § 2084; Laws, 1994, ch. 607, § 9; Laws, 2013, ch. 308, § 2, eff from and after July 1, 2013.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

ALR.

Liability for injury or death of minor or other incompetent inflicted upon himself by gun made available by defendant. 75 A.L.R.3d 825.

Validity of state statute proscribing possession or carrying of knife. 47 A.L.R.4th 651.

Fact that gun was unloaded as affecting criminal responsibility. 68 A.L.R.4th 507.

Fact that gun was broken, dismantled, or inoperable as affecting criminal responsibility under weapons statute. 81 A.L.R.4th 745.

Am. Jur.

19 Am. Jur. Pl & Pr Forms (Rev), Parent and Child, Forms 122, 125, 125.1 (liability of parents for conduct of child).

25 Am. Jur. Pl & Pr Forms (Rev), Weapons and Firearms, Form 26 (complaint, petition or declaration, negligence entrustment of firearm to minor, against firearm owner and minor – including cause of action alleging violation of statute).

§ 97-37-17. Possession of weapons by students; aiding or encouraging.

(1) The following definitions apply to this section:

(a) "Educational property" shall mean any public or private school building or bus, public or private school campus, grounds, recreational area, athletic field, or other property owned, used or operated by any local school board, school, college or university board of trustees, or directors for the administration of any public or private educational institution or during a school-related activity, and shall include the facility and property of the Oakley Youth Development Center, operated by the Department of Human Services; provided, however, that the term "educational property" shall not include any sixteenth section school land or lieu land on which is not located a school building, school campus, recreational area or athletic field.

(b) "Student" shall mean a person enrolled in a public or private school, college or university, or a person who has been suspended or expelled within the last five (5) years from a public or private school, college or university, or a person in the custody of the Oakley Youth Development Center, operated by the Department of Human Services, whether the person is an adult or a minor.

(c) "Switchblade knife" shall mean a knife containing a blade or blades which open automatically by the release of a spring or a similar contrivance.

(d) "Weapon" shall mean any device enumerated in subsection (2) or (4) of this section.

(2) It shall be a felony for any person to possess or carry, whether openly or concealed, any gun, rifle, pistol or other firearm of any kind, or any dynamite cartridge, bomb, grenade, mine or powerful explosive on educational property. However, this subsection does not apply to a BB gun, air rifle or air pistol. Any person violating this subsection shall be guilty of a felony and, upon conviction thereof, shall be fined not more than Five Thousand Dollars ($5,000.00), or committed to the custody of the State Department of Corrections for not more than three (3) years, or both.

(3) It shall be a felony for any person to cause, encourage or aid a minor who is less than eighteen (18) years old to possess or carry, whether openly or concealed, any gun, rifle, pistol or other firearm of any kind, or any dynamite cartridge, bomb, grenade, mine or powerful explosive on educational property. However, this subsection does not apply to a BB gun, air rifle or air pistol. Any person violating this subsection shall be guilty of a felony and, upon conviction thereof, shall be fined not more than Five Thousand Dollars ($5,000.00), or committed to the custody of the State Department of Corrections for not more than three (3) years, or both.

(4) It shall be a misdemeanor for any person to possess or carry, whether openly or concealed, any BB gun, air rifle, air pistol, bowie knife, dirk, dagger, slingshot, leaded cane, switchblade knife, blackjack, metallic knuckles, razors and razor blades (except solely for personal shaving), and any sharp-pointed or edged instrument except instructional supplies, unaltered nail files and clips and tools used solely for preparation of food, instruction and maintenance on educational property. Any person violating this subsection shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than One Thousand Dollars ($1,000.00), or be imprisoned not exceeding six (6) months, or both.

(5) It shall be a misdemeanor for any person to cause, encourage or aid a minor who is less than eighteen (18) years old to possess or carry, whether openly or concealed, any BB gun, air rifle, air pistol, bowie knife, dirk, dagger, slingshot, leaded cane, switchblade, knife, blackjack, metallic knuckles, razors and razor blades (except solely for personal shaving) and any sharp-pointed or edged instrument except instructional supplies, unaltered nail files and clips and tools used solely for preparation of food, instruction and maintenance on educational property. Any person violating this subsection shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than One Thousand Dollars ($1,000.00), or be imprisoned not exceeding six (6) months, or both.

(6) It shall not be a violation of this section for any person to possess or carry, whether openly or concealed, any gun, rifle, pistol or other firearm of any kind on educational property if:

(a) The person is not a student attending school on any educational property;

(b) The firearm is within a motor vehicle; and

(c) The person does not brandish, exhibit or display the firearm in any careless, angry or threatening manner.

(7) This section shall not apply to:

(a) A weapon used solely for educational or school-sanctioned ceremonial purposes, or used in a school-approved program conducted under the supervision of an adult whose supervision has been approved by the school authority;

(b) Armed Forces personnel of the United States, officers and soldiers of the militia and National Guard, law enforcement personnel, any private police employed by an educational institution, State Militia or Emergency Management Corps and any guard or patrolman in a state or municipal institution, and any law enforcement personnel or guard at a state juvenile training school, when acting in the discharge of their official duties;

(c) Home schools as defined in the compulsory school attendance law, Section 37-13-91;

(d) Competitors while participating in organized shooting events;

(e) Any person as authorized in Section 97-37-7 while in the performance of his official duties;

(f) Any mail carrier while in the performance of his official duties; or

(g) Any weapon not prescribed by Section 97-37-1 which is in a motor vehicle under the control of a parent, guardian or custodian, as defined in Section 43-21-105, which is used to bring or pick up a student at a school building, school property or school function.

(8) All schools shall post in public view a copy of the provisions of this section.

HISTORY: Codes, 1880, § 2988; 1892, § 1030; 1906, § 1109; Hemingway's 1917, § 835; 1930, § 859; 1942, § 2085; Laws, 1994, ch. 607, § 1; Laws, 1995, ch. 607, § 1; Laws, 2008, ch. 459, § 2; Laws, 2010, ch. 554, § 12, eff from and after July 1, 2011.

Cross References — Enforcement of school rules and regulations, see § 37-9-69.
Penalty for abuse of school superintendent, principal, teacher, or bus driver, see § 37-11-21.
Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

Because proof that notice that firearms were prohibited on campus and in student housing was not element of the crime defined by this section, reversal of defendant's conviction was not required due to the fact no witness had personal knowledge that a copy of the notice was posted at the apartment complex. Hill v. State, 215 So. 3d 518, 2017 Miss. App. LEXIS 188 (Miss. Ct. App.), cert. denied, 229 So. 3d 712, 2017 Miss. LEXIS 460 (Miss. 2017).

There was sufficient evidence to convict defendant of unlawful possession of a firearm on educational property because it established that the apartment complex was open only to university students and was managed and operated by the university's Department of Housing and Residence Life. Hill v. State, 215 So. 3d 518, 2017 Miss. App. LEXIS 188 (Miss. Ct. App.), cert. denied, 229 So. 3d 712, 2017 Miss. LEXIS 460 (Miss. 2017).

A high school student was properly adjudicated delinquent for having handguns on school grounds, where the guns were found in the student's locker, the student had exclusive possession of the locker and kept it under lock and key, and a second student testified that the first student had offered to sell him 2 handguns and had told him that he had the guns at school. S.C. v. State, 583 So. 2d 188, 1991 Miss. LEXIS 387 (Miss. 1991).

OPINIONS OF THE ATTORNEY GENERAL

Except for the circumstances allowed in subsection 6, it appears to be a violation of state law for a school principal to carry a weapon, whether concealed or not, on school property, and neither the superintendent nor the school board may grant permission for such an action. Webster, July 31, 1998, A.G. Op. #98-0427.

While carrying a weapon in a visible belt holster on educational property would not violate the concealed weapon statute (Section 97-37-1) it would violate Section 97-37-17's prohibition against carrying a weapon on education property. Lance, June 13, 2013, 2013 Miss. AG LEXIS 111.

RESEARCH REFERENCES

ALR.

Validity of state statute proscribing possession or carrying of knife. 47 A.L.R.4th 651.

Fact that gun was unloaded as affecting criminal responsibility. 68 A.L.R.4th 507.

Fact that gun was broken, dismantled, or inoperable as affecting criminal responsibility under weapons statute. 81 A.L.R.4th 745.

What constitutes "constructive possession" of unregistered or otherwise prohibited weapon under state law. 88 A.L.R.5th 121.

§ 97-37-19. Deadly weapons; exhibiting in threatening manner.

If any person, having or carrying any dirk, dirk-knife, sword, sword-cane, or any deadly weapon, or other weapon the carrying of which concealed is prohibited by Section 97-37-1, shall, in the presence of another person, brandish or wield the same in a threatening manner, not in necessary self-defense, or shall in any manner unlawfully use the same in any fight or quarrel, the person so offending, upon conviction thereof, shall be fined in a sum not exceeding Five Hundred Dollars ($500.00) or be imprisoned in the county jail not exceeding three (3) months, or both. In prosecutions under this section it shall not be necessary for the affidavit or indictment to aver, nor for the state to prove on the trial, that any gun, pistol, or other firearm was charged, loaded, or in condition to be discharged.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 9(9); 1857, ch. 64, art. 56; 1871, § 2699; 1880, § 2804; 1892, § 1031; 1906, § 1110; Hemingway's 1917, § 836; 1930, § 860; 1942, § 2086; Laws, 2013, ch. 308, § 3, eff from and after July 1, 2013.

Cross References — Peace bonds, see §§ 99-23-1 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Indictment.
3. Defenses.

1. In general.

In prosecution for exhibiting a deadly

weapon, it was not necessary for the state to prove that weapon was exhibited at any particular individual but only that the deadly weapon was exhibited in the presence of three or more persons. Sykes v. Crystal Springs, 216 Miss. 18, 61 So. 2d 387, 1952 Miss. LEXIS 609 (Miss. 1952).

In prosecution for unlawfully exhibiting a deadly weapon, it was not necessary for the city to introduce into evidence a certified copy of the city ordinance making all offenses under the penal laws of this state which are misdemeanors, criminal offenses against the city within whose corporate limits the offense was committed. Sykes v. Crystal Springs, 216 Miss. 18, 61 So. 2d 387, 1952 Miss. LEXIS 609 (Miss. 1952).

A pistol is a "deadly weapon" within statute denouncing the exhibition or carrying of such weapon, even without proof that the pistol is loaded or presently capable of committing a violent injury. Cittadino v. State, 199 Miss. 235, 24 So. 2d 93, 1945 Miss. LEXIS 284 (Miss. 1945).

This section [Code 1942, § 2086] applicable generally to any persons committing acts prohibited by Code 1906, §§ 1106-1109 [Code 1942, §§ 2082-2085]. State v. Ware, 102 Miss. 634, 59 So. 854, 1912 Miss. LEXIS 101 (Miss. 1912).

Section [Code 1942, § 2086] not limited to the person described in the four preceding sections [Code 1942, §§ 2082-2085], but the word "such" should be regarded as having been inserted by a clerical mistake, and this section should be construed as applicable generally to any person. State v. Ware, 102 Miss. 634, 59 So. 854, 1912 Miss. LEXIS 101 (Miss. 1912).

Pocket knife is deadly weapon. State v. Ware, 102 Miss. 634, 59 So. 854, 1912 Miss. LEXIS 101 (Miss. 1912).

2. Indictment.

A charge under this section [Code 1942, § 2086] cannot be consolidated with a charge of carrying concealed a deadly weapon and a charge of assault and battery with fists, and the consolidated case had in one trial. Woods v. State, 200 Miss. 527, 27 So. 2d 895, 1946 Miss. LEXIS 318 (Miss. 1946).

Indictment must allege that accused exhibited a deadly weapon in the presence of three or more persons. Parrett v. State, 101 Miss. 306, 58 So. 1, 1911 Miss. LEXIS 147 (Miss. 1911).

The omission of the word "manner," after the words "rude, angry and threatening," in an indictment, is a formal defect, and may be amended as such. In such indictment it is unnecessary to aver that the defendant was "carrying" the weapon. Gamblin v. State, 45 Miss. 658, 1871 Miss. LEXIS 115 (Miss. 1871).

3. Defenses.

Where defendant, in indictment for carrying concealed weapon, proved that he apprehended attack, conviction could not be had on ground he had exhibited weapon in rude, angry, or threatening manner. Talley v. State, 174 Miss. 349, 164 So. 771, 1935 Miss. LEXIS 90 (Miss. 1935).

A provocation to justify the exhibiting of a deadly weapon must arise at the time of the exhibition. Cannon v. State, 75 Miss. 364, 22 So. 827, 1897 Miss. LEXIS 117 (Miss. 1897).

RESEARCH REFERENCES

ALR.

Pocket or clasp knife as deadly or dangerous weapon for purposes of statute aggravating offenses such as assault, robbery, or homicide. 100 A.L.R.3d 287.

Dog as deadly or dangerous weapon for purposes of statutes aggravating offenses such as assault and robbery. 7 A.L.R.4th 607.

Validity of state statute proscribing possession or carrying of knife. 47 A.L.R.4th 651.

Fact that gun was unloaded as affecting criminal responsibility. 68 A.L.R.4th 507.

Fact that gun was broken, dismantled, or inoperable as affecting criminal responsibility under weapons statute. 81 A.L.R.4th 745.

Am. Jur.

6 Am. Jur. 2d, Assault and Battery §§ 37 et seq., 124, 133.

79 Am. Jur. 2d, Weapons § 32.

CJS.
94 C.J.S., Weapons §§ 41-43, 47-50.

§ 97-37-21. Explosives and weapons of mass destruction; false report of placing.

It shall be unlawful for any person to report to another by any means, including telephone, mail, e-mail, mobile phone, fax or any means of communication, that a bomb or other explosive or chemical, biological or other weapons of mass destruction has been, or is to be, placed or secreted in any public or private place, knowing that such report is false. Any person who shall be convicted of a violation of this section shall be fined not more than Ten Thousand Dollars ($10,000.00) or shall be committed to the custody of the Department of Corrections for not more than ten (10) years, or both.

HISTORY: Codes, 1942, § 2143.3; Laws, 1971, ch. 351, § 1; Laws, 1979, ch. 485; Laws, 2002, ch. 384, § 1; Laws, 2003, ch. 409, § 1, eff from and after July 1, 2003.

JUDICIAL DECISIONS

1. In general.
Three 13-year old youths found to be delinquent for violating a statute making it a misdemeanor to falsely report the placement of a bomb in a public place, were not subjected to cruel and unusual punishment or a deprivation of equal protection of the law by being sentenced to a training school until they attained the age of 20 years or until the earlier further orders of the court, despite the fact that the statute violated provided a penalty of imprisonment in the county jail not to exceed one year and a fine not to exceed $500, since there is a distinction and difference between the penal statutes and the juvenile delinquency statutes. In Interest of Wilder, 347 So. 2d 520, 1977 Miss. LEXIS 2048 (Miss. 1977).

RESEARCH REFERENCES

ALR.
Criminal offense of bomb hoax or making false report as to planting of explosive. 93 A.L.R.2d 304.

Imposition of state or local penalties for threatening to use explosive devices at schools or other buildings. 79 A.L.R.5th 1.

Validity, construction, and application of 18 U.S.C.S. § 844(e), prohibiting use of mail, telephone, telegraph, or other instrument of commerce to convey bomb threat. 160 A.L.R. Fed. 625.

Law Reviews.
1979 Mississippi Supreme Court Review: Criminal Law and Procedure. 50 Miss. L. J. 763, December 1979.

§ 97-37-23. Unlawful possession of explosives; duty of officers to make search and to seize explosives; exception to prohibition.

(1) Except for persons who are engaged in lawful business activities or persons who are engaged in educational activities conducted by educational institutions, it is unlawful for any person to have in his possession:

(a) Dynamite caps, nitroglycerine caps, fuses, detonators, dynamite, nitroglycerine, explosives, gas or stink bombs, or other similar explosives peculiarly possessed and adapted to aid in the commission of a crime; except such person or persons who are engaged in a lawful business which ordinarily requires the use thereof in the ordinary and usual conduct of such business, and who possess said articles for the purpose of use in said business;

(b) Any:

(i) Bomb;

(ii) Grenade;

(iii) Rocket having a propellant charge of more than four (4) ounces;

(iv) Missile having an explosive or incendiary charge of more than one-quarter (¼) ounce;

(v) Mine;

(vi) Any combination of parts either designed or intended for use in converting any device into one or more of the destructive devices described in this paragraph (b); or

(vii) Any device which consists of or includes a breakable container including a flammable liquid or compound and a wick composed of any material which, when ignited, is capable of igniting such flammable liquid or compound and can be carried or thrown by one (1) individual acting alone; and

(viii) Or other similar explosives peculiarly possessed and adapted to aid in the commission of a crime; and

(c) Upon conviction of any person thereof, he shall be punished by imprisonment in the penitentiary for a term not to exceed five (5) years. The possession of such explosives by one who does not customarily use same in his regular and ordinary occupational activities shall be prima facie evidence of an intention to use same for such unlawful purposes.

(2) It shall be the duty of any sheriff, constable, marshal, or policeman in a municipality, or any person vested with general police authority, who has reason to believe and does believe that the above described explosives are being transported or possessed for aid in the commission of a crime, forthwith to make a reasonable search of such person or vehicle, and to seize such explosives and to at once arrest the person or persons having possession or control thereof. Such officer or officers proceeding in good faith shall not be liable either civilly or criminally for such a search and seizure without a warrant, so long as said search and seizure is conducted in a reasonable manner, it appearing that the officer or officers had reason to believe and did believe that the law was being violated at the time such search was instituted. And the officer or officers making such search shall be competent to testify as a witness or witnesses as to all facts ascertained by means of said reasonable search or seizure, and all such explosives seized shall be admitted in evidence. But this section shall not authorize the search of a residence or home, or room, or building, or the premises belonging to or in the possession lawfully of the party suspected, without a search warrant.

(3) In order to invoke the exception provided in subsection (1) for persons

who possess explosive articles for business purposes, such person must comply with the provisions of this subsection as follows:

(a) One or more individuals shall be designated by the owner of a business employing explosive articles subject to this section as the custodian for such articles; and

(b) The custodian shall notify the sheriff of any county wherein such articles are utilized or employed by registering with the sheriff in writing prior to such use and including in such registration:

(i) The business name and address of the owner of the articles;

(ii) The name, address and local address of the custodian;

(iii) The location of the job site where such articles shall be employed;

(iv) In the event subject articles will not be in the immediate possession of the custodian, the custodian shall advise the sheriff of the specific location where such articles are left or stored;

(v) Whenever business operations subject to this section or the storage of articles subject to this section occur within an incorporated municipality, the mayor or chief of police shall also be notified as required by this subsection.

(4) Any person who fails to comply with the provisions of subsection (3) of this section shall, upon conviction thereof, be punished by imprisonment in the state penitentiary for a term not to exceed one (1) year or by a fine in an amount not to exceed Ten Thousand Dollars ($10,000.00), or by both.

(5) The provisions of subsections (3) and (4) of this section are supplemental to any other statutory provision, ordinances of local governments or liabilities or duties otherwise imposed by law.

HISTORY: Codes, 1942, § 2143.5; Laws, 1947, 2nd Ex. ch. 6, §§ 1, 2; Laws, 1986, ch. 385; Laws, 2000, ch. 538, § 1, eff from and after July 1, 2000.

Cross References — Regulation of explosives, see §§ 45-13-101 et seq.

Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see § 97-43-1 et seq.

RESEARCH REFERENCES

ALR.

Possession of bomb, Molotov cocktail, or similar device as criminal offense. 42 A.L.R.3d 1230.

Lawfulness of warrantless search of purse or wallet of person arrested or suspected of crime. 29 A.L.R.4th 771.

Propriety of search of nonoccupant visitor's belongings pursuant to warrant issued for another's premises. 51 A.L.R.5th 375.

Admissibility of evidence discovered in search of adult defendant's property or residence authorized by defendant's minor child – state cases. 51 A.L.R.5th 425.

What circumstances fall within "inevitable discovery" exception to rule precluding admission, in criminal case, of evidence obtained in violation of Federal Constitution. 81 A.L.R. Fed. 331.

Am. Jur.

31A Am. Jur. 2d, Explosions and Explosives §§ 174 et seq.

§ 97-37-25. Explosives and weapons of mass destruction; unlawful use.

It shall be unlawful for any person at any time to bomb, or to plant or place any bomb, or other explosive matter or chemical, biological or other weapons of mass destruction or thing in, upon or near any building, residence, ship, vessel, boat, railroad station, railroad car or coach, bus station, or depot, bus, truck, aircraft, or other vehicle, gas and oil stations and pipelines, radio station or radio equipment or other means of communication, warehouse or any electric plant or water plant, telephone exchange or any of the lines belonging thereto, wherein a person or persons are located or being transported, or where there is being manufactured, stored, assembled or shipped or in the preparation of shipment any goods, wares, merchandise or anything of value, with the felonious intent to hurt or harm any person or property, and upon conviction thereof shall be imprisoned for life in the State Penitentiary if the penalty is so fixed by the jury; and in cases where the jury fails to fix the penalty at imprisonment for life in the State Penitentiary the court shall fix the penalty at imprisonment in the State Penitentiary for any term as the court, in its discretion, may determine, but not to be less than five (5) years.

HISTORY: Codes, 1942, § 2143; Laws, 1942, ch. 204; Laws, 1947, 2nd Ex. ch. 7; Laws, 1974, ch. 576, § 5; Laws, 2000, ch. 538, § 2; Laws, 2003, ch. 409, § 2, eff from and after July 1, 2003.

Cross References — Regulation of explosives, see §§ 45-13-101 et seq.

Used explosives or weapons of mass destruction, as provided in this section, defined as crime of violence, see § 97-3-2.

Murder perpetrated by use of bomb or explosive device as constituting capital murder, see § 97-3-19.

Arson at state supported school buildings, see § 97-17-3.

Penalty for false report of placing bomb, see § 97-37-21.

Applicability of the Racketeer Influenced and Corrupt Organization Act to this section, see § 97-43-1 et seq.

JUDICIAL DECISIONS

1. In general.

A capital case is any case where the permissible punishment prescribed by the legislature is death, even though such penalty may not be inflicted since the decision of the United States Supreme Court in Furman v. Georgia, 408 U.S. 238, 33 L. Ed. 2d 346, 92 S. Ct. 2726, reh den 409 U.S. 902, 34 L. Ed. 2d 163, 93 S. Ct. 89 and on remand 229 Ga 731, 194 SE2d 410. Hudson v. McAdory, 268 So. 2d 916, 1972 Miss. LEXIS 1216 (Miss. 1972).

This section [Code 1942, § 2143] makes it unlawful for any person to plant any bomb or other explosive matter or thing near any building where there is being stored any goods, wares, merchandise, or anything of value, with a felonious intent to harm the personal property. Tarrants v. State, 236 So. 2d 360, 1970 Miss. LEXIS 1475 (Miss. 1970), cert. denied, 401 U.S. 920, 91 S. Ct. 907, 27 L. Ed. 2d 823, 1971 U.S. LEXIS 3245 (U.S. 1971).

It is not necessary that a bomb have a fuse or detonating device in order to constitute a violation of this section [Code 1942, § 2143]. Tarrants v. State, 236 So. 2d 360, 1970 Miss. LEXIS 1475 (Miss. 1970), cert. denied, 401 U.S. 920, 91 S. Ct. 907, 27 L. Ed. 2d 823, 1971 U.S. LEXIS 3245 (U.S. 1971).

The particular evil sought to be curbed

by the enactment of this section [Code 1942, § 2143] was violence to persons or property, and the classifying characteristics of that particular evil is the employment or use of bombs or other explosives in, upon or near any bus or other objects and places designated in the statute as a means and place to accomplish the evil. Rogers v. State, 228 Miss. 873, 89 So. 2d 860, 1956 Miss. LEXIS 576 (Miss. 1956).

The noun "bomb" was intended to designate an infernal machine employing explosives contrived by criminals to accomplish bodily injury or destruction of property. Rogers v. State, 228 Miss. 873, 89 So. 2d 860, 1956 Miss. LEXIS 576 (Miss. 1956).

The court is not authorized to limit the application of this section [Code 1942, § 2143] to cases where the bus in question was carrying passengers on public ways, or when there was a strike in progress. Rogers v. State, 228 Miss. 873, 89 So. 2d 860, 1956 Miss. LEXIS 576 (Miss. 1956).

It is not necessary to hurl, throw or drop a bomb onto a bus to constitute the bombing of a bus. Rogers v. State, 228 Miss. 873, 89 So. 2d 860, 1956 Miss. LEXIS 576 (Miss. 1956).

Where, pursuant to a plan to kill a bus driver, the accused attached dynamite to an empty bus in such a manner that it exploded upon the ignition being turned on, and the intended victim was horribly injured, the presence of the bus driver at the time of the explosion satisfied the statutory requirements that the bus must be occupied. Rogers v. State, 228 Miss. 873, 89 So. 2d 860, 1956 Miss. LEXIS 576 (Miss. 1956).

Where the accused, pursuant to a plan to kill a bus driver, attached dynamite to a bus in such a manner that it exploded upon the ignition being turned on, and the intended victim was horribly maimed, the offense came within the purview of this section [Code 1942, § 2143], rather than Code 1942, § 2011. Rogers v. State, 228 Miss. 873, 89 So. 2d 860, 1956 Miss. LEXIS 576 (Miss. 1956).

RESEARCH REFERENCES

ALR.

Criminal offense of bomb hoax or making false report as to planting of explosive. 93 A.L.R.2d 304.

Recovery of damages for emotional distress, fright, and the like, resulting from blasting operations. 75 A.L.R.3d 770.

Jurisdictional basis for prosecution under 18 USCS § 844(i), making it a federal offense to destroy, by means of explosive, property used in interstate commerce or in any activity affecting interstate commerce. 54 A.L.R. Fed. 752.

Am. Jur.

31A Am. Jur. 2d, Explosions and Explosives §§ 167 et seq.

CJS.

35 C.J.S., Explosives §§ 1 et seq.

§ 97-37-27. Fireworks; unlawful to explode in certain places.

It shall be unlawful to explode any fire-crackers, roman candles, skyrockets or any kind of fireworks in any unincorporated town or village in this state, within three hundred yards of any railroad depot, and cotton or hay warehouse or any cotton-yard. And any one violating the provisions of this section shall, upon conviction, before any justice of the peace, be fined not more than ten dollars nor less than one dollar, or imprisoned not more than ten days, or may be both fined and imprisoned.

HISTORY: Codes, 1906, § 1171; Hemingway's 1917, § 900; 1930, § 927; 1942, § 2156; Laws, 1896, ch. 169.

Editor's Notes — Pursuant to Miss. Constn., Art. 6, § 171, all reference in the Mississippi Code to justice of the peace shall mean justice court judge.

Cross References — Regulation of fireworks, see §§ 45-13-1 et seq.

JUDICIAL DECISIONS

1. In general.

Ordinance of incorporated municipality prohibiting sale, possession, or control of fireworks within the city limits is unauthorized under this section [Code 1942, § 2156]. King v. Louisville, 207 Miss. 612, 42 So. 2d 813, 1949 Miss. LEXIS 374 (Miss. 1949).

OPINIONS OF THE ATTORNEY GENERAL

A county board of supervisors has the authority to enact regulations allowing the explosion of fireworks in "unincorporated towns and villages" which are not within three hundred yards of a railroad depot, cotton or hay warehouse or cotton yard. Morrow, Jan. 13, 2006, A.G. Op. 05-0640.

RESEARCH REFERENCES

ALR.

Validity, construction, and application of state or local laws regulating the sale, possession, use, or transport of fireworks. 48 A.L.R.5th 659.

§ 97-37-29. Shooting into dwelling house.

If any person shall willfully and unlawfully shoot or discharge any pistol, shotgun, rifle or firearm of any nature or description into any dwelling house or any other building usually occupied by persons, whether actually occupied or not, he shall be guilty of a felony whether or not anybody be injured thereby and, on conviction thereof, shall be punished by imprisonment in the state penitentiary for a term not to exceed ten (10) years, or by imprisonment in the county jail for not more than one (1) year, or by fine of not more than five thousand dollars ($5,000.00), or by both such imprisonment and fine, within the discretion of the court.

HISTORY: Codes, 1942, § 2086.5; Laws, 1966, ch. 387, § 1, eff from and after passage (approved May 20, 1966).

Cross References — Shooting into dwelling, as provided in this section, defined as crime of violence, see § 97-3-2.

Carrying deadly weapons, see §§ 97-37-1 et seq.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Sentence proper.
3. Evidence.
4. Double Jeopardy.

1. In general.

Based on the facts of this case, the "usually occupied by persons" language of

Miss. Code Ann. § 97-37-29 (Rev. 2014) was not a necessary element of the crime. Because the omission of the "usually occupied by persons" language in the instruction on shooting into a dwelling did not result in a manifest miscarriage of justice or seriously affect the fairness, integrity, or public reputation of the judicial proceeding, the circuit court's decision to give the instruction did not amount to plain error. Caffie v. State, 269 So. 3d 1203, 2018 Miss. App. LEXIS 401 (Miss. Ct. App. 2018).

Miss. Code Ann. § 97-37-29 should be classified as a general intent crime since the term "willfully," without more, indicates the person intended to do the unlawful bodily movements: that is, to shoot the firearm; there is no further language in the statute for an intent to do a further act or achieve another consequence, as there would be in a specific intent crime. Johnson v. State, 44 So. 3d 400, 2010 Miss. App. LEXIS 255 (Miss. Ct. App. 2010).

Trial court did not abuse its discretion by admitting defendant's prior conviction of shooting into an occupied dwelling into evidence under Miss. R. Evid. 609 because he opened the door to the state's questions concerning the conviction, as he testified that he did not get angry with his loved ones and that he, at best, simply walked away if he started getting angry; the prior conviction involved defendant's shooting into his ex-girlfriend's house. White v. State, 962 So. 2d 728, 2007 Miss. App. LEXIS 525 (Miss. Ct. App. 2007).

Defendant's convictions for murder, armed robbery, and shooting into an occupied dwelling were appropriate because the evidence was sufficient: two witnesses testified to seeing defendant shoot the victim; a witness further testified to observing defendant removing the victim's clothing and wallet; and a female testified to a shot being fired through her front door at approximately the time that the victim was shot. Conner v. State, 971 So. 2d 630, 2007 Miss. App. LEXIS 370 (Miss. Ct. App.), cert. denied, 973 So. 2d 244, 2007 Miss. LEXIS 682 (Miss. 2007).

Where defendant admitted to firing a shot while near or at a victim's front door, witnesses saw him at the scene, he threatened to shoot everyone inside the residence, and there were no bullet holes there earlier in the day, there was sufficient evidence to support a conviction under Miss. Code Ann. § 97-37-29; therefore, a trial court did not err by refusing to grant a peremptory instruction or by denying defendant's motions for a directed verdict and judgment notwithstanding the verdict and/or a new trial. Miles v. State, 956 So. 2d 349, 2007 Miss. App. LEXIS 280 (Miss. Ct. App. 2007).

Defendant's convictions for aggravated assault and shooting into an occupied dwelling were not against the overwhelming weight of the evidence because: (1) the victim and a witness testified that they told police right away that defendant was the shooter; (2) the victim's mother testified that one week before the shooting the victim's sister and defendant's ex-girlfriend called home scared because defendant had threatened to shoot up the house or to set it on fire; (3) the victim's mother testified that it was that same week she spotted defendant trying to break into the home; and (4) defendant's brother-in-law testified that defendant admitted that he shot the victim. Brown v. State, 986 So. 2d 308, 2006 Miss. App. LEXIS 924 (Miss. Ct. App. 2006), rev'd, 986 So. 2d 270, 2008 Miss. LEXIS 340 (Miss. 2008).

Trial judge properly refused to direct a verdict in defendant's favor where the evidence offered by the State was such that fair-minded jurors could find defendant guilty as charged; eyewitnesses testified that they had seen the defendant kill the victim and shoot into the air and gun residue tests indicated that defendant had been in the environment of a discharged weapon. Maxwell v. State, 856 So. 2d 513, 2003 Miss. App. LEXIS 379 (Miss. Ct. App. 2003), cert. denied, 892 So. 2d 824, 2005 Miss. LEXIS 11 (Miss. 2005).

Having been indicted separately for both murder, under § 97-3-19, and for felony of shooting into occupied building, under this section, defendant who was tried on murder indictment alone, and who had been convicted only of manslaughter, could not be prosecuted in second trial for shooting felony, since, under circumstances of case, it was lesser offense that was included in murder charge. Davis v. Herring, 800 F.2d 513, 1986 U.S. App. LEXIS 31243 (5th Cir. Miss. 1986).

When defendant has been tried for murder and convicted of lesser offense of manslaughter, subsequent indictment for separate felony of shooting into occupied building based on same criminal episode is barred on double jeopardy grounds. Davis v. Herring, 800 F.2d 513, 1986 U.S. App. LEXIS 31243 (5th Cir. Miss. 1986).

The evidence was sufficient to support a conviction of shooting into a building usually occupied by other people under this section where there was overwhelming evidence that shot gun pellets went into the exterior of a door to a motel room; the meaning and intention of the statute were met even though there was no evidence as to the condition of the inside of the door. May v. State, 569 So. 2d 1188, 1990 Miss. LEXIS 672 (Miss. 1990).

The offenses of aggravated assault under § 97-3-7 and shooting into a dwelling house under this section did not constitute the "same offense" for double jeopardy purposes where at least 18 shots were fired into the house and the victim was not struck with all 18 shots; the 2 statutes require proof of different facts in that shooting into a dwelling house is not required to establish an aggravated assault, and neither injury nor attempt to injure is required to prove the offense of shooting into a dwelling house. Shook v. State, 552 So. 2d 841, 1989 Miss. LEXIS 449 (Miss. 1989).

Defendant accused of shooting into occupied building is not deprived of fair and impartial trial by improper admission of testimony concerning threats made to chief prosecuting witness and witness' family and employees, as well as improper hearsay testimony as to police chief's opinion of reason for shooting; testimony by eyewitness that defendant participated in crime and evidence that gun used was found in defendant's possession is sufficient to support conviction. Walker v. State, 473 So. 2d 435, 1985 Miss. LEXIS 2186 (Miss. 1985).

Conviction for shooting into occupied dwelling may not be based upon practically unsupported testimony of witness whose story is constantly changing, particularly in case which also involves possible perjury, inadequate instructions and possibility of illicit attempts to influence jury. Rainer v. State, 473 So. 2d 172, 1985 Miss. LEXIS 2158 (Miss. 1985).

Evidence offered pursuant to a void indictment returned under this section [Code 1942, § 2086.5] would be sufficient, were the indictment not void, to withstand a motion by the defendants for a directed verdict. Whitney v. State, 205 So. 2d 284, 1967 Miss. LEXIS 1239 (Miss. 1967).

2. Sentence proper.

Inmate was not entitled to post-conviction relief simply because he was sentenced to 10 years for the shooting into a dwelling house, which was the maximum sentence, even though he was a first time offender, because sentences were generally upheld on appeal if they were within the statutory range. Johnson v. State, 908 So. 2d 900, 2005 Miss. App. LEXIS 566 (Miss. Ct. App. 2005).

3. Evidence.

State presented sufficient evidence to support defendant's conviction for shooting into a dwelling because the witness testified she saw defendant shoot seven or eight times toward her home and photographs showed the bullet holes and other damage to the home. Morris v. State, — So. 3d —, 2020 Miss. App. LEXIS 11 (Miss. Ct. App. Jan. 14, 2020), cert. denied, — So. 3d —, 2020 Miss. LEXIS 366 (Miss. 2020).

Weight and sufficiency of the evidence supported a conviction for shooting into a dwelling where a victim's home received damage from bullets, and the victim identified defendant as the shooter. Further, defendant called no witnesses, and his attorney merely suggested that someone else was responsible for the crime. Martin v. State, 214 So. 3d 217, 2017 Miss. LEXIS 92 (Miss. 2017).

Evidence was sufficient to support defendant's conviction, given that the damage to the store and the owner's testimony provided enough evidence for jurors to have found that a shooting into the dwelling had occurred, plus given that defendant stood outside the store immediately prior to the shooting, the owner testified that defendant held something black in his hand and appeared alone, and no other person was in the vicinity at the time of the shooting, jurors could have found that defendant was the perpetrator. Edwards v. State, 167 So. 3d 1286, 2014 Miss. App. LEXIS 679 (Miss. Ct. App. 2014), cert. denied, 168 So. 3d 962, 2015 Miss. LEXIS 358 (Miss. 2015).

Evidence had to show beyond a reasonable doubt that defendant willfully and unlawfully shot or discharged a firearm into a building normally occupied by persons. Edwards v. State, 167 So. 3d 1286, 2014 Miss. App. LEXIS 679 (Miss. Ct. App. 2014), cert. denied, 168 So. 3d 962, 2015 Miss. LEXIS 358 (Miss. 2015).

Defendant's conviction for shooting into a dwelling house was appropriate because the testimony showed that defendant willfully and unlawfully fired the weapon in the direction of the trailer and struck it. The proof also showed that defendant was aiming at the victim, who was standing in front of the trailer. Johnson v. State, 44 So. 3d 400, 2010 Miss. App. LEXIS 255 (Miss. Ct. App. 2010).

Defendant's conviction for shooting into a dwelling house was appropriate because the appellate court rejected defendant's contention that "willfully" in Miss. Code Ann. § 97-37-29 must be interpreted to mean that he had to have the specific intent to shoot into the trailer. Defendant was presumed to have known that when he attempted to shoot the victim while the fight ensued in front of the trailer, a natural probable result of this illegal act was the possibility of shooting into the trailer. Johnson v. State, 44 So. 3d 400, 2010 Miss. App. LEXIS 255 (Miss. Ct. App. 2010).

Although defendant, who was convicted of murder while engaged in the crime of drive-by shooting and for shooting into an occupied dwelling, argued that the State failed to prove that he willfully discharged a pistol into a dwelling, the evidence amply supported the jury's finding that defendant willfully shot into an occupied dwelling. Two witnesses testified that defendant expressed his intent to shoot at the victim's house and that he admitted shooting the victim, and the victim's girlfriend identified defendant's voice during an altercation that took place outside the victim's home immediately prior to the shooting. Boyd v. State, 977 So. 2d 329, 2008 Miss. LEXIS 144 (Miss. 2008).

4. Double Jeopardy.

Defendant's convictions for murder and for shooting into an occupied dwelling did not violate the double jeopardy clause of the Fifth Amendment. In order to convict defendant for shooting into an occupied dwelling, the State was required to prove that defendant shot into a dwelling house, but no such showing was required to convict defendant under the felony-murder statute. Boyd v. State, 977 So. 2d 329, 2008 Miss. LEXIS 144 (Miss. 2008).

RESEARCH REFERENCES

Am. Jur.

6 Am. Jur. 2d, Assault and Battery §§ 37 et seq.

79 Am. Jur. 2d, Weapons § 32.

13 Am. Jur. Trials 465, Defending Minor Felony Cases §§ 1 et seq.

§ 97-37-30. Willful discharge of a firearm toward the dwelling of another causing damage to property or domesticated animal or livestock.

A person who willfully discharges his firearm toward the dwelling of another, causing property damage to the dwelling or any domesticated animal or livestock, is guilty of a misdemeanor punishable by a fine of not more than One Thousand Dollars ($1,000.00) or imprisonment not exceeding twelve (12) months in the county jail, or both.

HISTORY: Laws, 2010, ch. 523, § 1, eff from and after July 1, 2010.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 97-37-31. Silencers on firearms; manufacture, sale, possession or use unlawful.

It shall be unlawful for any person, persons, corporation or manufacturing establishment, not duly authorized under federal law, to make, manufacture, sell or possess any instrument or device which, if used on firearms of any kind, will arrest or muffle the report of the firearm when shot or fired. Any person violating this section shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than Five Hundred Dollars ($500.00), or imprisoned in the county jail not more than thirty (30) days, or both.

HISTORY: Codes, Hemingway's 1917, §§ 1110 et seq; 1930, § 1139; 1942, § 2376; Laws, 1910, ch. 139; Laws, 2000, ch. 496, § 1; Laws, 2015, ch. 433, § 3; Laws, 2016, ch. 344, § 1, eff from and after passage (approved Apr. 5, 2016).

Cross References — Carrying of deadly weapons, see §§ 97-37-1 et seq.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

OPINIONS OF THE ATTORNEY GENERAL

It is unlawful to manufacture, sell, possess, or use any silencer or suppressor for use with a firearm in the state even if a person has a federal permit to do so. Head, November 20, 1998, A.G. Op. #98-0619.

§ 97-37-33. Toy pistols; sale of pistol or cartridges prohibited; cap pistols excepted.

If any person shall sell, or offer, or expose for sale any toy pistol, or cartridges, or other contrivance by which such pistols are fired or made to cause an explosion, he shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than five dollars nor more than twenty-five dollars, or by imprisonment in the county jail not less than three days nor more than thirty days, or both.

It is expressly provided, however, that nothing herein shall be construed to prohibit the sale, or offering, or exposure for sale of any toy cap pistols, or other devices, in which paper caps manufactured in accordance with United States Interstate Commerce Commission regulations for packing or shipping of toy paper caps are used or exploded, and the sale of such toy cap pistols is hereby declared to be permissible.

HISTORY: Codes, 1892, § 1247; 1906, § 1322; Hemingway's 1917, § 1055; 1930, § 1086; 1942, § 2319; Laws, 1884, p. 82; Laws, 1952, ch. 257.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 97-37-35. Stolen firearms; possession, receipt, acquisition or disposal; offense; punishment.

(1) It is unlawful for any person knowingly or intentionally to possess, receive, retain, acquire or obtain possession or dispose of a stolen firearm or attempt to possess, receive, retain, acquire or obtain possession or dispose of a stolen firearm.

(2) It is unlawful for any person knowingly or intentionally to sell, deliver or transfer a stolen firearm or attempt to sell, deliver or transfer a stolen firearm.

(3) Any person convicted of violating this section shall be guilty of a felony and shall be punished as follows:

(a) For the first conviction, punishment by commitment to the Department of Corrections for five (5) years;

(b) For the second and subsequent convictions, the offense shall be considered trafficking in stolen firearms punishable by commitment to the Department of Corrections for not less than fifteen (15) years.

(c) For a conviction where the offender possesses two (2) or more stolen firearms, the offense shall be considered trafficking in stolen firearms punishable by commitment to the Department of Corrections for not less than fifteen (15) years.

(4) Any person who commits or attempts to commit any other crime while in possession of a stolen firearm shall be guilty of a separate felony of possession of a stolen firearm under this section and, upon conviction thereof, shall be punished by commitment to the Department of Corrections for five (5) years, such term to run consecutively and not concurrently with any other sentence of incarceration.

HISTORY: Laws, 1998, ch. 431, § 1, eff from and after July 1, 1998.

JUDICIAL DECISIONS

ANALYSIS

1. Indictment.
2. Evidence.
3. Overwhelming weight of evidence.
4. Sentence.

1. Indictment.

Defendant's 30-year sentence for each count of trafficking in stolen firearms was not unconstitutionally disproportionate to the crime committed because (1) it was within the statutory guidelines, which the legislature created as a matter of public policy; (2) it was below the potential life sentence he could have received; and (3) it was not grossly disproportionate to the crime he committed. Riley v. State, 1 So. 3d 877, 2008 Miss. App. LEXIS 378 (Miss. Ct. App. 2008), cert. denied, 999 So. 2d 1280, 2009 Miss. LEXIS 18 (Miss. 2009).

2. Evidence.

Evidence was sufficient to prove that defendant had knowledge that the gun found under his seat was stolen because the officer testified he saw defendant trying to conceal something under the seat, when he raised his hands the officer heard the gun drop, officers found the gun sticking out under the seat, and the State presented evidence that the gun was stolen and the gun's owner did not give it defendant. Barton v. State, — So. 3d —, 2020 Miss. App. LEXIS 9 (Miss. Ct. App. Jan. 14, 2020), aff'd, in part, rev'd, — So. 3d —, 2020 Miss. LEXIS 356 (Miss. 2020).

In acquitting defendant on a possession-of-a-stolen-firearm charge, the Supreme Court concluded the evidence was insufficient to prove defendant knew the firearm he possessed was stolen because it failed to exclude the equally plausible theory consistent with defendant's innocence on this charge: that he hid the weapon because he was a convicted felon. Barton v. State, — So. 3d —, 2020 Miss. LEXIS 356 (Miss. Oct. 1, 2020).

Jury could have inferred that defendant knowingly and intentionally possessed a stolen firearm; he possessed the gun, which was the only item stolen, he discarded the gun while running from the police, evincing guilty knowledge, and no explanation was given as to how he possessed the weapon. Hobson v. State, 181 So. 3d 1021, 2015 Miss. App. LEXIS 681 (Miss. Ct. App. 2015).

Defendant's argument that the State failed to prove that he knew the firearm he used in the shootings was stolen and thus, that his conviction for possession of a stolen firearm was improper, was without merit, Miss. Code Ann. § 97-37-35(1). The jury heard the informant testify that he gave defendant a pistol in exchange for crack cocaine and the informant testified that defendant knew the pistol was stolen and that defendant was trying to sell it quickly because it was a stolen gun. Mayers v. State, 42 So. 3d 33, 2010 Miss. App. LEXIS 88 (Miss. Ct. App.), cert. denied, 42 So. 3d 24, 2010 Miss. LEXIS 437 (Miss. 2010).

To convict a defendant of trafficking in stolen firearms, the State did not need to enter the actual firearms into evidence as (1) there was no best evidence rule with regard to physical evidence that was not writings, recordings, or photographs; (2) requiring the State to offer actual firearms into evidence would impose a high burden on prosecutors and the courts in cases where there were large quantities of physical evidence; and (3) the State satisfied the relevancy and authentication requirements permitting the photographs of the firearms to be introduced into evidence. Riley v. State, 1 So. 3d 877, 2008 Miss. App. LEXIS 378 (Miss. Ct. App. 2008), cert. denied, 999 So. 2d 1280, 2009 Miss. LEXIS 18 (Miss. 2009).

3. Overwhelming weight of evidence.

Guilty verdict was not against the overwhelming weight of the evidence because (1) the testimony of defendant's accomplice was reasonable, consistent, and substantially uncontradicted; (2) the jury received a cautionary instruction relating to the manner in which the accomplice testimony should be viewed; (3) the accomplice's testimony that defendant knew the firearms were stolen was corroborated because defendant told the investigators that he had nothing to do with the burglaries and only pointed out places where guns were sold; and (4) one of the buyers testified that defendant sold the guns to him. Riley v. State, 1 So. 3d 877, 2008 Miss. App. LEXIS 378 (Miss. Ct. App. 2008), cert. denied, 999 So. 2d 1280, 2009 Miss. LEXIS 18 (Miss. 2009).

4. Sentence.

Defendant's 30-year sentence for each count of trafficking in stolen firearms was not unconstitutionally disproportionate to the crime committed because (1) it was within the statutory guidelines, which the legislature created as a matter of public policy; (2) it was below the potential life sentence he could have received; and (3) it was not grossly disproportionate to the crime he committed. Riley v. State, 1 So. 3d 877, 2008 Miss. App. LEXIS 378 (Miss. Ct. App. 2008), cert. denied, 999 So. 2d 1280, 2009 Miss. LEXIS 18 (Miss. 2009).

§ 97-37-37. Enhanced penalty for use of firearm during commission of felony.

(1) Except to the extent that a greater minimum sentence is otherwise provided by any other provision of law, any person who uses or displays a firearm during the commission of any felony shall, in addition to the punishment provided for such felony, be sentenced to an additional term of impris-

onment in the custody of the Department of Corrections of five (5) years, which sentence shall not be reduced or suspended.

(2) Except to the extent that a greater minimum sentence is otherwise provided by any other provision of law, any convicted felon who uses or displays a firearm during the commission of any felony shall, in addition to the punishment provided for such felony, be sentenced to an additional term of imprisonment in the custody of the Department of Corrections of ten (10) years, to run consecutively, not concurrently, which sentence shall not be reduced or suspended.

HISTORY: Laws, 2004, ch. 392, § 1; Laws, 2007, ch. 323, § 1, eff from and after July 1, 2007.

JUDICIAL DECISIONS

ANALYSIS

1. Applicability.
2. Double jeopardy.
3. Evidence.
4. Jury trial.
5. Notice.
6. Resentencing.

1. Applicability.

Enhancement of defendant's sentence was appropriate because the jury found beyond a reasonable doubt that defendant used a deadly weapon, a handgun, during the robbery of a restaurant employee. Horton v. State, 253 So. 3d 334, 2018 Miss. App. LEXIS 42 (Miss. Ct. App.), cert. denied, 252 So. 3d 595, 2018 Miss. LEXIS 390 (Miss. 2018).

Because defendant was sentenced for manslaughter as a habitual offender, and Section 99-19-81 Miss. Code Ann. required that he receive the mandatory maximum sentence of 20 years, the enhanced penalty provided under Section 97-37-37 was not applicable. Enhancement under Section 97-37-37 applies only to the extent that a greater minimum sentence is not otherwise provided by another provision of law. Harvey v. State, 191 So. 3d 1270, 2015 Miss. App. LEXIS 524 (Miss. Ct. App. 2015), cert. denied, 202 So. 3d 208, 2016 Miss. LEXIS 212 (Miss. 2016).

Because defendant's sentence of thirty years without parole for the offense of kidnapping was within the statutory limits, it was not contrary to the law. Although defendant could have received a life sentence under the kidnapping statute, the State of Mississippi did not seek a life sentence, and defendant's sentence was subject to enhancement because the victim was older than sixty-five, defendant used a gun, and defendant was a habitual offender. Burrell v. State, 183 So. 3d 19, 2015 Miss. LEXIS 531 (Miss. 2015).

Trial court erred in sentencing defendant under Miss. Code Ann. § 97-37-37(2) where Miss. Code Ann. § 99-19-81 required the court to sentence him as a habitual offender to the maximum sentence of 20 years on his aggravated assault conviction, and that required sentence was a greater minimum sentence than the 10-year enhancement, and thus, § 97-37-37(2) was inapplicable. Cooper v. State, 165 So. 3d 545, 2015 Miss. App. LEXIS 291 (Miss. Ct. App. 2015).

Jury is required find the elements of the firearm enhancement, Miss. Code Ann. § 97-37-37(2) (Rev. 2014), beyond a reasonable doubt under Apprendi before a trial court was allowed to apply the enhancement. Sallie v. State, 155 So. 3d 760, 2015 Miss. LEXIS 38 (Miss. 2015).

Because defendant was not convicted of any charge involving the use and display of the firearm and the jury was not instructed to determine if defendant had used or displayed the firearm that he possessed in the commission of a felony, the circuit court erroneously used a fact that had not been determined by the jury to enhance his sentence beyond the statutory maximum. Johnson v. State, 132 So.

3d 616, 2013 Miss. App. LEXIS 859 (Miss. Ct. App. 2013).

Because no authority holds that the indictment must make reference to the enhancement statute, and the statute specifying what the indictment must contain does not require such inclusion, and because the counts in the indictment alleged that defendant committed an aggravated assault by shooting the victim in the back with a firearm and that he was a convicted felon in unlawful possession of a firearm, there was no unfair surprise regarding defendant's sentence enhancement, and the enhanced portion of his sentence was legal. Sallie v. State, 155 So. 3d 872, 2013 Miss. App. LEXIS 833 (Miss. Ct. App. 2013), aff'd in part, vacated in part, 155 So. 3d 760, 2015 Miss. LEXIS 38 (Miss. 2015).

Trial court erred in enhancing defendant's sentence for using a firearm during the commission of a felony because the jury did not specifically find defendant guilty of using a firearm in the commission of the crime of manslaughter; because the fact that defendant used a firearm during the commission of the felony crime of manslaughter could be inferred only from the evidence, not the jury's findings, the trial court was not permitted to enhance defendant's sentence. Waits v. State, 119 So. 3d 1024, 2013 Miss. LEXIS 414 (Miss. 2013).

Enhancement of defendant's sentence based on his use or display of a firearm in the commission of an aggravated assault did not run afoul of the Apprendi decision because every element of his sentence enhancement was contained in the indictment and submitted to the jury, Smith v. State, 106 So. 3d 877, 2013 Miss. App. LEXIS 38 (Miss. Ct. App. 2013).

Defendant's enhanced sentences for his convictions of aggravated assault on law enforcement officers were inappropriate because he should have been sentenced under Miss. Code Ann. § 97-37-37(1), which became effective on July 1, 2004 and which was in effect at the time his crime was committed. Instead, he was incorrectly sentenced under Miss. Code Ann. § 97-37-37(2), which was not in effect at the time his crime was committed. Mayers v. State, 42 So. 3d 33, 2010 Miss. App. LEXIS 88 (Miss. Ct. App.), cert. denied, 42 So. 3d 24, 2010 Miss. LEXIS 437 (Miss. 2010).

2. Double jeopardy.

Enhancement of defendant's sentence was appropriate because the jury found beyond a reasonable doubt that defendant used a deadly weapon, a handgun, during the robbery of a restaurant employee. Defendant was not subjected to double jeopardy by the enhancement. Horton v. State, 253 So. 3d 334, 2018 Miss. App. LEXIS 42 (Miss. Ct. App.), cert. denied, 252 So. 3d 595, 2018 Miss. LEXIS 390 (Miss. 2018).

Firearm sentence enhancement of this section did not violate the Double Jeopardy Clause. Parker v. State, 277 So. 3d 1, 2018 Miss. App. LEXIS 155 (Miss. Ct. App. 2018), aff'd, 273 So. 3d 695, 2019 Miss. LEXIS 211 (Miss. 2019).

Although defendant claimed that his indictment as a habitual offender along with the imposed sentence enhancement constituted double jeopardy, sentencing under Miss. Code Ann. §§ 97-37-5, 97-37-37(2) presented no double-jeopardy concern. Billups v. State, 270 So. 3d 917, 2018 Miss. App. LEXIS 461 (Miss. Ct. App. 2018).

Circuit court properly sentenced defendants to five years in custody for using a firearm during the commission of a crime because defendants candidly acknowledged that the appellate court had rejected the same basic argument on several occasions, and the state supreme court adopted the appellate court's reasoning that, by enacting the firearm enhancement, the Legislature intended to authorize cumulative punishment. Rosebur v. State, 214 So. 3d 307, 2017 Miss. App. LEXIS 185 (Miss. Ct. App. 2017).

Firearm enhancement did not subject defendant to double jeopardy. Gunn v. State, 174 So. 3d 848, 2014 Miss. App. LEXIS 641 (Miss. Ct. App. 2014), cert. denied, — So. 3d —, 2015 Miss. LEXIS 479 (Miss. 2015).

Defendant, following a conviction for aggravated assault, was properly sentenced with a firearms enhancement because Miss. Code Ann. §§ 97-37-37 merely imposed an elevated sentence for use or display of a firearm during the commission of a felony, and it did not delineate an independent substantive offense. Taylor v. State, 137 So. 3d 283, 2014 Miss. LEXIS 225 (Miss. 2014).

Same elements test did not apply because the statute is a sentence enhancement, not a separate crime, and thus defendant's double jeopardy claim related to his conviction of possession of a firearm by a felon was without merit. Stewart v. State, 131 So. 3d 569, 2014 Miss. LEXIS 87 (Miss. 2014).

Defendant's sentence enhancement did not give rise to a double jeopardy claim. Clark v. State, 127 So. 3d 292, 2013 Miss. App. LEXIS 553 (Miss. Ct. App. 2013).

Defendant's sentence enhancement for using a firearm in the commission of a felony, to wit, aggravated assault, did not violate principles of double jeopardy because the legislature clearly intended an additional term of imprisonment be applied cumulatively to the underlying offense. Wansley v. State, 114 So. 3d 793, 2013 Miss. App. LEXIS 316 (Miss. Ct. App.), cert. denied, 127 So. 3d 1115, 2013 Miss. LEXIS 655 (Miss. 2013).

Miss. Code Ann. § 97-37-37(2) merely imposes an elevated sentence for use or display of a firearm during the commission of a felony, and it does not delineate an independent substantive offense in violation of double jeopardy protections. Lewis v. State, 112 So. 3d 1092, 2013 Miss. App. LEXIS 220 (Miss. Ct. App. 2013).

Defendant's argument that the application of Miss. Code Ann. § 97-37-37 constituted double jeopardy because it required proof of the same elements as the underlying crimes was procedurally barred because it was not raised at trial. Notwithstanding the procedural bar, the argument was without merit because the statute was clearly a sentence enhancement and did not set out separate elements of the underlying felony. Mayers v. State, 42 So. 3d 33, 2010 Miss. App. LEXIS 88 (Miss. Ct. App.), cert. denied, 42 So. 3d 24, 2010 Miss. LEXIS 437 (Miss. 2010).

3. Evidence.

Trial court improperly applied a sentence enhancement because there was insufficient evidence showing that defendant used or displayed a firearm during the commission of a felony. The evidence reflected that defendant merely possessed the gun, but the trial court incorrectly determined that possession alone constituted use or display. Clark v. State, 127 So. 3d 292, 2013 Miss. App. LEXIS 553 (Miss. Ct. App. 2013).

4. Jury trial.

Circuit court erred in applying Miss. Code Ann. § 97-37-37(1) to enhance defendant's sentence where, based on the jury instruction that was given, the jury had not specifically found beyond a reasonable doubt that defendant used a firearm during the commission of the felony of manslaughter. Clayton v. State, 164 So. 3d 522, 2015 Miss. App. LEXIS 273 (Miss. Ct. App. 2015).

Defendant, following a conviction for aggravated assault, was properly sentenced with a firearms enhancement because the jury found every fact necessary for the trial court to impose the sentence enhancement. Taylor v. State, 137 So. 3d 283, 2014 Miss. LEXIS 225 (Miss. 2014).

Trial court's application of a sentencing enhancement violated defendant's right to a trial by jury because defendant was not found to be guilty of every element of the crime beyond a reasonable doubt. The jury found defendant guilty of possession of a weapon by a felon, but did not find that defendant used the firearm during the commission of the felony. Clark v. State, 127 So. 3d 292, 2013 Miss. App. LEXIS 553 (Miss. Ct. App. 2013).

5. Notice.

Fair reading of the indictment as a whole indicates that defendant knew or should have known that the 10-year firearm enhancement was a possibility; the facts required for application of the enhancement were included in the indictment, plus it contained reference to the firearm-enhancement statute. Watts v. State, 281 So. 3d 873, 2019 Miss. App. LEXIS 41 (Miss. Ct. App. 2019).

Firearm enhancement, which the circuit court included within defendant's sentence for aggravated assault, was reversed and rendered because the record did not show that any pretrial notice was given that the State of Mississippi intended to enhance defendant's sentence based on the firearm enhancement. Evans v. State, 282 So. 3d 659, 2019 Miss. App. LEXIS 336 (Miss. Ct. App. 2019).

Circuit court properly denied defendant's motion for postconviction relief because defendant was given adequate notice of a firearm enhancement where, while the indictment contained reference to the wrong statute, a fair reading of the indictment as a whole indicated the State's intent to pursue the firearm enhancement, defendant declined to postpone his open plea after the State amended the indictment, he was advised of the minimum and maximum number of years to serve, and the State did not have to present the amended indictment with the sentence enhancement to the grand jury inasmuch as defendant waived any obligation on the State to prove every element of the crime beyond a reasonable doubt by agreeing to an open plea. Clark v. State, 232 So. 3d 789, 2017 Miss. App. LEXIS 368 (Miss. Ct. App. 2017).

Defendant's petition for post-conviction relief, arguing that the circuit court erred in enhancing his sentences pursuant to the firearm-enhancement statute, was properly denied as defendant was given adequate notice of the possible sentence enhancements because the facts required for application of the firearm enhancement were contained in defendant's indictments for shooting into an occupied dwelling and aggravated assault; the trial court advised defendant of the mandatory five-year additional term for each count before pleading guilty; he acknowledged that he understood the firearm enhancements and wished to go forward with his pleas of guilty; and he was not unfairly surprised or prejudiced with respect to the firearm enhancements. Dortch v. State, 231 So. 3d 1017, 2017 Miss. App. LEXIS 212 (Miss. Ct. App. 2017).

Defendant failed to receive fair notice that the firearm sentence enhancement was being sought where his indictment did not indicate that the State would seek any sentence enhancement, the State in no way indicated pretrial that it would seek the firearm enhancement, and only after the jury convicted defendant did he receive any indication that the trial court might have considered the enhancement at trial. Sallie v. State, 155 So. 3d 760, 2015 Miss. LEXIS 38 (Miss. 2015).

6. Resentencing.

Court of appeals properly affirmed an order restructuring defendant's sentences to run consecutively, resulting in a sentence without the enhanced penalty, because the circuit court had authority to restructure the sentence to implement its original intent; following the supreme court's order of remand for resentencing, the circuit court stated that when it imposed the original sentence it thought defendant was going to have another 10-year sentence running consecutively to concurrent sentences. Sallie v. State, 237 So. 3d 749, 2018 Miss. LEXIS 117 (Miss. 2018).

HONESTY IN PURCHASING FIREARMS ACT

Sec.

97-37-101. Short title.

97-37-103. Definition.

97-37-105. Crime of soliciting, persuading, encouraging or enticing illegal sale of firearms or ammunition; crime of providing false information to licensed dealer or private seller of firearms or ammunition.

§ 97-37-101. Short title.

Sections 97-37-101 through 97-37-105 shall be known and may be cited as the "Honesty in Purchasing Firearms Act."

HISTORY: Laws, 2012, ch. 494, § 1, eff from and after July 1, 2012.

§ 97-37-103. Definition.

For purposes of Sections 97-37-101 through 97-37-105:

(a) "Licensed dealer" means a person who is licensed pursuant to 18 USCS, Section 923, to engage in the business of dealing in firearms.

(b) "Private seller" means a person who sells or offers for sale any firearm or ammunition.

(c) "Ammunition" means any cartridge, shell or projectile designed for use in a firearm.

(d) "Materially false information" means information that portrays an illegal transaction as legal or a legal transaction as illegal.

HISTORY: Laws, 2012, ch. 494, § 2, eff from and after July 1, 2012.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in the introductory paragraph by substituting "Sections 97-37-101 through 97-37-105" for "this section." The Joint Committee ratified the correction at its August 16, 2012, meeting.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in this section by deleting the subsection (1) designation preceding the first paragraph. The Joint Committee ratified the correction at its August 1, 2013, meeting.

§ 97-37-105. Crime of soliciting, persuading, encouraging or enticing illegal sale of firearms or ammunition; crime of providing false information to licensed dealer or private seller of firearms or ammunition.

(1) Any person who knowingly solicits, persuades, encourages or entices a licensed dealer or private seller of firearms or ammunition to transfer a firearm or ammunition under circumstances which the person knows would violate the laws of this state or the United States is guilty of a felony.

(2) Any person who provides to a licensed dealer or private seller of firearms or ammunition what the person knows to be materially false information with intent to deceive the dealer or seller about the legality of a transfer of a firearm or ammunition is guilty of a felony.

(3) Any person found guilty of violating the provisions of this section shall be punished by a fine not exceeding Five Thousand Dollars ($5,000.00) or imprisoned in the custody of the Department of Corrections for not more than three (3) years, or both.

(4) This section does not apply to a law enforcement officer acting in the officer's official capacity or to a person acting at the direction of a law enforcement officer.

HISTORY: Laws, 2012, ch. 494, § 3, eff from and after July 1, 2012.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

CHAPTER 39.

DUELING

Sec.

97-39-1.	Giving, accepting, or carrying challenge; advising, attending or aiding duel; penalty.
97-39-3.	Further penalties.
97-39-5.	Leaving the state for purposes of duel.
97-39-7.	Posting or publishing or vilifying another.
97-39-9.	Arrest of person about to engage in duel; peace bond.
97-39-11.	Fighting in public place with deadly weapon, or seconding such a fight; penalty.

§ 97-39-1. Giving, accepting, or carrying challenge; advising, attending or aiding duel; penalty.

Every person who shall challenge another to fight a duel, or who shall send, deliver, or cause to be delivered, any written or verbal message purporting or intended to be such challenge, or who shall accept any such challenge or message, or who shall knowingly carry or deliver any such message or challenge, or who shall be present at the time of fighting any duel with deadly weapons, either as second, aid, or surgeon, or who shall advise or give assistance to such duel, shall, on conviction thereof, be fined in a sum not less than three hundred dollars nor exceeding one thousand dollars, or be imprisoned not less than six months in the county jail, or both.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 9(1); 1857, ch. 64, art. 51; 1871, § 2531; 1880, § 2745; 1892, § 1036; 1906, § 1114; Hemingway's 1917, § 840; 1930, § 865; 1942, § 2091.

Cross References — Compelling one duelist to testify against another, see § 99-17-23.

RESEARCH REFERENCES

CJS.

28 C.J.S., Dueling §§ 1 et seq.

§ 97-39-3. Further penalties.

If any person shall fight a duel, or give or accept a challenge to fight a duel, or knowingly carry or deliver such challenge or the acceptance thereof, or be second to either party to any duel, whether such act be done in the state or out of it, or who shall go out of the state to fight a duel, or to assist in the same as second, or to send, accept, or carry a challenge, shall be disqualified from holding any office, be disenfranchised, and incapable of holding or being elected to any post of honor, profit or emolument, civil or military, under the constitution and laws of this state; and the appointment of any such person to office, as also all votes given to any such person, are illegal, and none of the votes given to such person for any office shall be taken or counted.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 9(2); 1857, ch. 64, art. 52; 1871, § 2532; 1880, § 2746; 1892, § 1037; 1906, § 1115; Hemingway's 1917, § 841; 1930, § 866; 1942, § 2092.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in this section. The word "disfranchised" was changed to "disenfranchised." The Joint Committee ratified the correction at its December 3, 1996 meeting.

Cross References — Prosecution for murder for death in this state of person mortally wounded in duel out of state, see § 97-3-23.

RESEARCH REFERENCES

CJS.
28 C.J.S., Dueling §§ 1 et seq.

§ 97-39-5. Leaving the state for purposes of duel.

If any person shall send, deliver, or cause to be sent or delivered, any challenge, written or verbal, in this state, to any person to fight a duel out of this state, or shall leave this state to fight a duel out of the same, or shall accept such challenge out of this state, and shall leave this state for the purpose of fighting a duel; or if any person shall leave this state for the purpose of sending, accepting, or bearing a challenge, or the acceptance thereof, to fight a duel or shall knowingly bear any challenge, or be concerned as second, aid, or surgeon, of either party, without this state, the person so offending shall be subject to the like punishment as is provided in Sections 97-39-1 and 97-39-3.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 9(4); 1857, ch. 64, art. 53; 1871, § 2533; 1880, § 2747; 1892, § 1038; 1906, § 1116; Hemingway's 1917, § 842; 1930, § 867; 1942, § 2093.

Cross References — Prosecution for murder for death in this state of person mortally wounded in duel out of state, see § 97-3-23.

RESEARCH REFERENCES

CJS.
28 C.J.S., Dueling §§ 1 et seq.

§ 97-39-7. Posting or publishing or vilifying another.

If any person shall post or publish another for not fighting a duel or for not sending or accepting a challenge to fight a duel, or shall use any reproachful or contemptuous language, whether oral, written, or printed, to or concerning another for not accepting or sending a challenge to fight a duel, or with intent to provoke a duel, he shall be guilty of a misdemeanor and be punished accordingly.

HISTORY: Codes, 1880, § 2748; 1892, § 1039; 1906, § 1117; Hemingway's 1917, § 843; 1930, § 868; 1942, § 2094.

Cross References — Criminal libel, see §§ 97-3-55, 97-3-57.

RESEARCH REFERENCES

CJS.
28 C.J.S., Dueling §§ 1 et seq.

§ 97-39-9. Arrest of person about to engage in duel; peace bond.

Any person, being about to violate the provisions of this chapter against dueling, may be arrested, and be required by any conservator of the peace to furnish bail to keep the peace and not violate the law against dueling for the period of two years. In default of such bail, or on giving bail, he shall be dealt with as provided in other cases of security to keep the peace, and all the provisions of the statute on that subject shall apply to bail as herein provided for.

HISTORY: Codes, 1880, § 2749; 1892, § 1040; 1906, § 1118; Hemingway's 1917, § 844; 1930, § 869; 1942, § 2095.

Cross References — Peace bonds, see §§ 99-23-1 et seq.

RESEARCH REFERENCES

CJS.
28 C.J.S., Dueling §§ 1 et seq.

§ 97-39-11. Fighting in public place with deadly weapon, or seconding such a fight; penalty.

If any person shall be guilty of fighting in any city, town, village, or other public place, and shall in such fight use any rifle, shotgun, sword, sword-cane, pistol, dirk, bowie-knife, dirk-knife, or any other deadly weapon, or if any person shall be second or aid in such fight, the person so offending shall be fined not less than three hundred dollars, and shall be imprisoned not less than three months; and if any person shall be killed in such fight, the person so killing the other may be prosecuted and convicted as in other cases of murder.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 9(5); 1857, ch. 64, art. 54; 1871, § 2534; 1880, § 2750; 1892, § 1041; 1906, § 1119; Hemingway's 1917, § 845; 1930, § 870; 1942, § 2096.

Cross References — Carrying deadly weapon, see §§ 97-37-1 et seq.

JUDICIAL DECISIONS

1. In general.

This section [Code 1942, § 2096] is designed to punish fighting willingly in a public place. It is a part of the legislation against dueling. It does not deprive one of the right to defend himself by repelling an attack. Hunter v. State, 62 Miss. 540, 1885 Miss. LEXIS 102 (Miss. 1885).

RESEARCH REFERENCES

ALR.

Fact that gun was unloaded as affecting criminal responsibility. 68 A.L.R.4th 507.

CJS.

28 C.J.S., Dueling §§ 1 et seq.

CHAPTER 41.

CRUELTY TO ANIMALS

Sec.

97-41-1. Living creatures not to be cruelly treated.
97-41-2. Authority to seize maltreated, neglected, or abandoned animals.
97-41-3. Authority to kill injured, neglected, etc. animals other than dogs or cats; authorization to euthanize injured, diseased, etc. dog or cat under certain circumstances; immunity of persons acting in good faith and without malice pursuant to section.
97-41-5. Carrying creature other than dog or cat in a cruel manner.
97-41-7. Confining creatures other than dogs or cats without food or water.
97-41-9. Failure of owner or custodian to provide sustenance to creatures other than dogs or cats.
97-41-11. Fighting animals or cocks.
97-41-13. Penalty for violating certain sections.
97-41-15. Malicious or mischievous injury to livestock; penalty; restitution.
97-41-16. Mississippi Dog and Cat Pet Protection Law of 2011; legislative intent; simple cruelty; aggravated cruelty; penalty; restitution; activities not constituting cruelty to domesticated dog or cat; immunity for good faith reporting of suspected cruelty; registration of organizations that have purpose of protection of or prevention of cruelty to domesticated dogs and cats.
97-41-17. Poisons; administering to animals.
97-41-18. Prohibition against intentionally conducting fight between canine and hog; exceptions; penalties.
97-41-19. Dog fights.
97-41-21. Harassment of guide, leader, hearing, service or support dogs; penalties.
97-41-23. Injury and killing of public service animals; penalties.

§ 97-41-1. Living creatures not to be cruelly treated.

Except as otherwise provided in Section 97-41-16 for a dog or cat, if any person shall intentionally or with criminal negligence override, overdrive, overload, torture, torment, unjustifiably injure, deprive of necessary sustenance, food, or drink; or cruelly beat or needlessly mutilate; or cause or procure to be overridden, overdriven, overloaded, tortured, unjustifiably injured, tormented, or deprived of necessary sustenance, food or drink; or to be cruelly beaten or needlessly mutilated or killed, any living creature, every such offender shall, for every offense, be guilty of a misdemeanor.

HISTORY: Codes, 1880, § 804; 1892, § 1014; 1906, § 1091; Hemingway's 1917, § 817; 1930, § 841; 1942, § 2067; Laws, 2011, ch. 536, § 2, eff from and after passage (approved Apr. 26, 2011).

Cross References — Livestock laws, see §§ 69-13-1 et seq.
Care and disposition of glandered animal, see § 97-27-7.

JUDICIAL DECISIONS

1. In general.

Miss. Code Ann. § 97-41-1, under which defendant was convicted of animal cruelty, was unconstitutionally vague; it lacked words of intent, and left defendant no room for discretion in deciding whether he would be able to heal his horse without having to destroy it. Davis v. State, 806 So. 2d 1098, 2001 Miss. LEXIS 323 (Miss. 2001).

One merely riding with and paying a fare to another, who hired a team, cannot be convicted of cruelty to the team in overloading and overdriving. Strickland v. State, 81 Miss. 134, 32 So. 921, 1902 Miss. LEXIS 129 (Miss. 1902).

RESEARCH REFERENCES

ALR.

What constitutes statutory offense of cruelty to animals. 82 A.L.R.2d 794.

Applicability of state animal cruelty statute to medical or scientific experimentation employing animals. 42 A.L.R.4th 860.

Cat a subject to larceny. 55 A.L.R.4th 1080.

What constitutes offense of cruelty to animals–modern cases. 6 A.L.R.5th 733.

Validity, Construction, and Application of Animal Welfare Act (7 U.S.C. § 2131 et seq.).

Challenges to Pre-and Post-Conviction Forfeitures and to Postconviction Restitution Under Animal Cruelty Statutes. 70 A.L.R.6th 329.

Validity, construction, and application of Animal Welfare Act (7 USCS §§ 2131 et seq). 36 A.L.R. Fed. 627.

Am. Jur.

4 Am. Jur. 2d, Animals §§ 23 et seq.

37 Am. Jur. Proof of Facts 2d 711, Justifiable Destruction of Animal.

CJS.

3B C.J.S., Animals §§ 198 et seq.

§ 97-41-2. Authority to seize maltreated, neglected, or abandoned animals.

(1) All courts in the State of Mississippi may order the seizure of an animal by a law enforcement agency, for its care and protection upon a finding of probable cause to believe said animal is being cruelly treated, neglected or abandoned. Such probable cause may be established upon sworn testimony of any person who has witnessed the condition of said animal. The court may appoint an animal control agency, agent of an animal shelter organization, veterinarian or other person as temporary custodian for the said animal, pending final disposition of the animal pursuant to this section. Such temporary custodian shall directly contract and be responsible for any care rendered to such animal, and may make arrangements for such care as may be necessary. Upon seizure of an animal, the law enforcement agency responsible for removal of the animal shall serve notice upon the owner of the animal, if possible, and shall also post prominently a notice to the owner or custodian to inform such person that the animal has been seized. Such process and notice shall contain a description of the animal seized, the date seized, the name of the law enforcement agency seizing the animal, the name of the temporary custodian, if known at the time, and shall include a copy of the order of the court authorizing the seizure.

(2) Within five (5) days of seizure of an animal, the owner of the animal

may request a hearing in the court ordering the animal to be seized to determine whether the owner is able to provide adequately for the animal and is fit to have custody of the animal. The court shall hold such hearing within fourteen (14) days of receiving such request. The hearing shall be concluded and the court order entered thereon within twenty-one (21) days after the hearing is commenced. Upon requesting a hearing, the owner shall have three (3) business days to post a bond or security with the court clerk in an amount determined by the court to be sufficient to repay all reasonable costs sufficient to provide for the animal's care. Failure to post such bond within three (3) days shall result in forfeiture of the animal to the court. If the temporary custodian has custody of the animal upon the expiration of the bond or security, the animal shall be forfeited to the court unless the court orders otherwise.

(3) In determining the owner's fitness to have custody of an animal, the court may consider, among other matters:

(a) Testimony from law enforcement officers, animal control officers, animal protection officials, and other witnesses as to the condition the animal was kept in by its owner or custodian.

(b) Testimony and evidence as to the type and amount of care provided to the animal by its owner or custodian.

(c) Expert testimony as to the proper and reasonable care of the same type of animal.

(d) Testimony from any witnesses as to prior treatment or condition of this or other animals in the same custody.

(e) Violations of laws relating to animal cruelty that the owner or custodian has been convicted of prior to the hearing.

(f) Any other evidence the court considers to be material or relevant.

(4) Upon proof of costs incurred as a result of the animal's seizure, including, but not limited to, animal medical and boarding, the court may order that the animal's owner reimburse the temporary custodian for such costs. A lien for authorized expenses is hereby created upon all animals seized under this section, and shall have priority to any other lien on such animal.

(5) If the court finds the owner of the animal is unable or unfit to adequately provide for the animal, or that the animal is severely injured, diseased, or suffering, and, therefore, not likely to recover, the court may order that the animal be permanently forfeited and released to an animal control agency, animal protection organization or to the appropriate entity to be euthanized or the court may order that such animal be sold at public sale in the manner now provided for judicial sales; any proceeds from such sale shall go first toward the payment of expenses and costs relating to the care and treatment of such animal, and any excess amount shall be paid to the owner of the animal.

(6) Upon notice and hearing as provided in this section, or as a part of any preceding conducted under the terms of this section, the court may order that other animals in the custody of the owner that were not seized be surrendered and further enjoin the owner from having custody of other animals in the future.

(7) If the court determines the owner is able to provide adequately for, and have custody of, the animal, the court shall order the animal be claimed and removed by the owner within seven (7) days after the date of the order.

(8) Nothing in this section shall be construed to prevent or otherwise interfere with a law enforcement officer's authority to seize an animal as evidence or require court action for the taking into custody and making proper disposition of animals as authorized in Sections 21-19-9 and 41-53-11.

(9) For the purposes of this section the term "animal" or "animals" means any feline, exotic animal, canine, horse, mule, jack or jennet.

HISTORY: Laws, 1997, ch. 575, § 1; Laws, 2001, ch. 497, § 1; Laws, 2003, ch. 357, § 1, eff from and after passage (approved Mar. 12, 2003).

Cross References — Justice Courts, see §§ 9-11-2 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. Evidence; sufficiency.
2. Reimbursement for care of seized animals.

1. Evidence; sufficiency.

Substantial evidence supported permanent forfeiture and reimbursement orders regarding defendant's horses, dogs, and cats because law-enforcement officers, a veterinarian, and representatives from the Mississippi Department of Agriculture and animal-protection organizations testified and detailed how the animals were kept without adequate water, food, and shelter. Furthermore, exhibits consisting of several dozen photographs of the animals and defendant's property were entered into evidence by stipulation. Dancy v. State, 287 So. 3d 931, 2020 Miss. LEXIS 8 (Miss. 2020).

2. Reimbursement for care of seized animals.

Circuit court properly released defendant's horses to the temporary custody of an animal protection organization following the permanent forfeiture of the horses after probable cause was found to believe that the horses were being maltreated and neglected. Furthermore, the court properly ordered defendant to reimburse the organization a liquidated sum for the costs of caring and boarding the horses during the court proceedings, including defendant's appeal from the justice court to the circuit court for a trial de novo. Dancy v. State, 287 So. 3d 931, 2020 Miss. LEXIS 8 (Miss. 2020).

§ 97-41-3. Authority to kill injured, neglected, etc. animals other than dogs or cats; authorization to euthanize injured, diseased, etc. dog or cat under certain circumstances; immunity of persons acting in good faith and without malice pursuant to section.

(1) Any sheriff, constable, policeman, or agent of a society for the prevention of cruelty to animals may kill, or cause to be killed, any animal other than a dog or cat found neglected or abandoned, if in the opinion of three (3) respectable citizens it is injured or diseased past recovery, or by age has become useless.

(2)(a) After all reasonable attempts have been made to locate the legal owner of a dog or cat that is found maimed, wounded, injured or diseased, the dog or cat may be euthanized, or caused to be euthanized, by:

(i) A law enforcement officer;

(ii) A veterinarian licensed in Mississippi;

(iii) An employee of an agency or department of a political subdivision that is charged with the control or welfare of dogs or cats within the subdivision; or

(iv) An employee or agent of an organization that has the purpose of protecting the welfare of or preventing cruelty to dogs or cats and that possesses nonprofit status under the United States Internal Revenue Code.

(b) The provisions of this subsection (2) shall not be construed to prevent the immediate euthanasia by the persons enumerated in this subsection or by any other person, if it is necessary to prevent unrelievable suffering of the dog or cat.

(3) Any person acting in good faith and without malice pursuant to this section shall be immune from civil and criminal liability for that action.

HISTORY: Codes, 1892, § 1015; 1906, § 1092; Hemingway's 1917, § 818; 1930, § 842; 1942, § 2068; Laws, 2011, ch. 536, § 3, eff from and after passage (approved Apr. 26, 2011).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in this section. The word "be" preceding "injured or diseased" was changed to "is." The Joint Committee ratified the correction at its August 5, 2008, meeting.

Cross References — Another section derived from same 1942 code section, see § 97-41-9.

Penalty for violation of this section, see § 97-41-13.

RESEARCH REFERENCES

ALR.

Personal liability of public officer for killing or injuring animal while carrying out statutory duties with respect to it. 2 A.L.R.3d 822.

Construction of provisions of statute or ordinance governing occasion, time, or manner of summary destruction of domestic animals by public authorities. 42 A.L.R.4th 839.

Am. Jur.

4 Am. Jur. 2d, Animals §§ 23 et seq.

37 Am. Jur. Proof of Facts 2d 711, Justifiable Destruction of Animal.

CJS.

3B C.J.S., Animals §§ 198 et seq.

§ 97-41-5. Carrying creature other than dog or cat in a cruel manner.

If any person shall carry, or cause to be carried by hand or in or upon any vehicle or other conveyance, any creature other than a dog or cat in a cruel or inhuman manner, he shall be guilty of a misdemeanor.

HISTORY: Codes, 1880, § 808; 1892, § 1018; 1906, § 1095; Hemingway's 1917, § 821; 1930, § 845; 1942, § 2071; Laws, 2011, ch. 536, § 4, eff from and after passage (approved Apr. 26, 2011).

Cross References — Penalty for violation of this section, see § 97-41-13.

RESEARCH REFERENCES

ALR.
What constitutes offense of cruelty to animals–modern cases. 6 A.L.R.5th 733.

Am. Jur.
4 Am. Jur. 2d, Animals §§ 23 et seq.

CJS.
3B C.J.S., Animals §§ 198 et seq.

§ 97-41-7. Confining creatures other than dogs or cats without food or water.

If any person shall confine, or cause to be confined, in any stable, lot, or other place, any living creature other than a dog or cat, without supplying the same during such confinement with a sufficient quantity of good and wholesome food and water, he shall be guilty of a misdemeanor.

HISTORY: Codes, 1880, § 806; 1892, § 1017; 1906, § 1094; Hemingway's 1917, § 820; 1930, § 844; 1942, § 2070; Laws, 2011, ch. 536, § 5, eff from and after passage (approved Apr. 26, 2011).

Cross References — Penalty for violation of this section, see § 97-41-13.

RESEARCH REFERENCES

ALR.
What constitutes offense of cruelty to animals–modern cases. 6 A.L.R.5th 733.

Am. Jur.
4 Am. Jur. 2d, Animals §§ 23 et seq.

CJS.
3B C.J.S., Animals §§ 198 et seq.

§ 97-41-9. Failure of owner or custodian to provide sustenance to creatures other than dogs or cats.

If any person be the owner or have the custody of any living creature other than a dog or cat and unjustifiably neglect or refuse to furnish it necessary sustenance, food, or drink, he shall be guilty of a misdemeanor.

HISTORY: Codes, 1892, § 1015; 1906, § 1092; Hemingway's 1917, § 818; 1930, § 842; 1942, § 2068; Laws, 2011, ch. 536, § 6, eff from and after passage (approved Apr. 26, 2011).

Cross References — Another section derived from same 1942 code section, see § 97-41-3.

Penalty for violation of this section, see § 97-41-13.

RESEARCH REFERENCES

ALR.
What constitutes offense of cruelty to animals–modern cases. 6 A.L.R.5th 733.

Am. Jur.
4 Am. Jur. 2d, Animals §§ 23 et seq.

CJS.
3B C.J.S., Animals §§ 198 et seq.

§ 97-41-11. Fighting animals or cocks.

Any person who shall keep or use, or in any way be connected with or interested in the management of, or shall receive money for the admission of any person to, any place kept or used for the purpose of fighting any bear, cock or other creature, except a dog, or of tormenting or torturing the same, and every person who shall encourage, aid, or assist therein, or who shall permit or suffer any place to be so kept or used, shall be guilty of a misdemeanor. It shall be the duty of any policeman or other officer of the law, county or municipal, to enter into any such place kept for such purpose, and to arrest each and every person concerned or participating therein.

HISTORY: Codes, 1880, § 805; 1892, § 1016; 1906, § 1093; Hemingway's 1917, § 819; 1930, § 843; 1942, § 2069; Laws, 1987, ch. 489, § 3, eff from and after July 1, 1987.

Cross References — Penalty for violation of this section, see § 97-41-13.
Prohibition of dog fights and the penalties with respect thereto, see § 97-41-19.
Arrests, generally, see §§ 99-3-1 et seq.

OPINIONS OF THE ATTORNEY GENERAL

In regard to "wild hog baying and catching," if the animals are fought, killed, maimed, wounded, injured, tormented or tortured, then the practice would be illegal. However, such is a question of fact for the courts to decide. Johnson, Mar. 9, 2004, A.G. Op. 04-0078.

RESEARCH REFERENCES

ALR.
Validity and construction of statute, ordinance, or regulation applying to specific dog breeds, such as "pit bulls" or "bull terriers". 80 A.L.R.4th 70.
What constitutes offense of cruelty to animals–modern cases. 6 A.L.R.5th 733.
Validity, Construction, and Application of Statutes and Ordinances to Prosecution for Cockfighting. 69 A.L.R.6th 207.

Am. Jur.
4 Am. Jur. 2d, Animals, §§ 23 et seq.

CJS.
3B C.J.S., Animals §§ 198 et seq.

§ 97-41-13. Penalty for violating certain sections.

Any person who shall violate any of Sections 97-41-3 to 97-41-11, or Section 97-27-7 on the subject of cruelty to animals shall, on conviction, be fined not less than ten dollars nor more than one hundred dollars, or shall be imprisoned in the county jail not less than ten days nor more than one hundred days or both.

HISTORY: Codes, 1880, § 813; 1892, § 1020; 1906, § 1097; Hemingway's 1917, § 823; 1930, § 847; 1942, § 2073.

RESEARCH REFERENCES

ALR.

Challenges to Pre- and Post-Conviction Forfeitures and to Postconviction Restitution Under Animal Cruelty Statutes. 70 A.L.R.6th 329.

Am. Jur.

4 Am. Jur. 2d, Animals §§ 23 et seq.

CJS.

3B C.J.S., Animals §§ 198 et seq.

§ 97-41-15. Malicious or mischievous injury to livestock; penalty; restitution.

(1) Any person who shall maliciously, either out of a spirit of revenge or wanton cruelty, or who shall mischievously kill, maim or wound, or injure any livestock, or cause any person to do the same, shall be guilty of a felony and upon conviction, shall be committed to the custody of the State Department of Corrections for not less than twelve (12) months nor more than five years, and fined an amount not less than One Thousand Five Hundred Dollars ($1,500.00), nor more than Ten Thousand Dollars ($10,000.00).

(2) In addition to any such fine or imprisonment which may be imposed, the court shall order that restitution be made to the owner of any animal listed in subsection (1) of this section. The measure for restitution in money shall be the current replacement value of such loss and/or the actual veterinarian fees, special supplies, loss of income and other costs incurred as a result of actions in violation of subsection (1) of this section.

(3) For purposes of this section, the term "livestock" shall mean horses, cattle, swine, sheep and other domestic animals produced for profit.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 7(1); 1857, ch. 64, art. 201; 1871, § 8708; 1880, § 2917; 1892, § 1022; 1906, § 1099; Hemingway's 1917, § 825; 1930, § 849; 1942, § 2075; Laws, 1981, ch 448, § 1; Laws, 1993, ch. 438, § 2, eff from and after July 1, 1993.

Cross References — Shooting or killing deer or livestock by headlighting or other lighting devices, see § 49-7-95.

Restitution to owner for poultry or livestock killed by dogs, see § 95-5-21.

Penalty for feloniously taking livestock, and definition of livestock, see § 97-17-53.

Restitution to victims of crimes, generally, see §§ 99-37-1 et seq.

JUDICIAL DECISIONS

1. In general.

Affidavit for maliciously shooting animal which neither gives names nor description of horse, cannot be amended so as to allege ownership in another than persons set out in affidavit. White v. State, 95 Miss. 75, 48 So. 611, 1909 Miss. LEXIS 221 (Miss. 1909).

Guilt is determinable by the intent and purpose which prompts the act. Stephens

v. State, 65 Miss. 329, 3 So. 458, 1887 Miss. LEXIS 63 (Miss. 1887).

But an indictment which avers that the offense was "maliciously" done, without adding the words, "out of a spirit of revenge or wanton cruelty," is good. These words merely describe and define "maliciously." Rembert v. State, 56 Miss. 280, 1879 Miss. LEXIS 110 (Miss. 1879).

And the affidavit or indictment must aver one or the other. Thompson v. State, 51 Miss. 353, 1875 Miss. LEXIS 53 (Miss. 1875).

The section [Code 1942, § 2075] defines two distinct attributes of malicious injury, within one or the other of which the facts must bring a case to warrant conviction: (1) that the injury was done "maliciously; either out of a spirit of revenge or wanton cruelty;" or (2) that it was done "mischievously." Duncan v. State, 49 Miss. 331, 1873 Miss. LEXIS 121 (Miss. 1873).

OPINIONS OF THE ATTORNEY GENERAL

As long as animals in dog baying contest involving dogs and wild hogs were not fought, killed, maimed, wounded or injured or tormented, then practice would not be illegal. Simmons, June 16, 1993, A.G. Op. #93-0365.

RESEARCH REFERENCES

ALR.

What constitutes offense of cruelty to animals–modern cases. 6 A.L.R.5th 733.

Propriety, Measure, and Elements of Restitution to Which Victim is Entitled Under State Criminal Statute – Cruelty to, Killing, or Abandonment of, Animals. 45 A.L.R.6th 435.

Am. Jur.

4 Am. Jur. 2d, Animals §§ 23 et seq.

52 Am. Jur. 2d, Malicious Mischief and Related Offenses §§ 1, 3, 5, 7, 8, 22.

CJS.

3B C.J.S., Animals §§ 198 et seq.

54 C.J.S., Malicious or Criminal Mischief or damage to property §§ 1 and 2.

§ 97-41-16. Mississippi Dog and Cat Pet Protection Law of 2011; legislative intent; simple cruelty; aggravated cruelty; penalty; restitution; activities not constituting cruelty to domesticated dog or cat; immunity for good faith reporting of suspected cruelty; registration of organizations that have purpose of protection of or prevention of cruelty to domesticated dogs and cats.

(1)(a) The provisions of this section shall be known and may be cited as the "Mississippi Dog and Cat Pet Protection Law of 2011."

(b) The intent of the Legislature in enacting this law is to provide only for the protection of domesticated dogs and cats, as these are the animals most often serving as the loyal and beloved pets of the citizens of this state. Animals other than domesticated dogs and cats are specifically excluded from the enhanced protection described in this section for dogs and cats. The provisions of this section do not apply, and shall not be construed as applying, to any animal other than a domesticated dog or cat.

(2)(a) If a person shall intentionally or with criminal negligence wound, deprive of adequate shelter, food or water, or carry or confine in a cruel manner, any domesticated dog or cat, or cause any person to do the same, then he or she shall be guilty of the offense of simple cruelty to a domesticated dog or cat. A person who is convicted of the offense of simple cruelty to a domesticated dog or cat shall be guilty of a misdemeanor and fined not more than One Thousand Dollars ($1,000.00), or imprisoned not more than six (6) months, or both. Each act of simple cruelty that is committed against more than one (1) domesticated dog or cat constitutes a separate offense.

(b)(i) If a person with malice shall intentionally torture, mutilate, maim, burn, starve to death, crush, disfigure, drown, suffocate or impale any domesticated dog or cat, or cause any person to do the same, then he or she shall be guilty of the offense of aggravated cruelty to a domesticated dog or cat. Each act of aggravated cruelty that is committed against more than one (1) domesticated dog or cat shall constitute a separate offense.

(ii) A person who is convicted of a first offense of aggravated cruelty to a domesticated dog or cat shall be guilty of a felony and fined not more than Five Thousand Dollars ($5,000.00), or committed to the custody of the Department of Corrections for not more than three (3) years, or both.

(iii) A person who is convicted of a second or subsequent offense of aggravated cruelty to a domesticated dog or cat, the offenses being committed within a period of five (5) years, shall be guilty of a felony and fined not more than Ten Thousand Dollars ($10,000.00) and imprisoned in the custody of the Department of Corrections for not less than one (1) year nor more than ten (10) years.

For purposes of calculating previous offenses of aggravated cruelty under this subparagraph (iii), commission of one or more acts of aggravated cruelty against one or more domesticated dogs or cats within a twenty-four-hour period shall be considered one (1) offense.

(c) A conviction entered upon a plea of nolo contendere to a charge of aggravated cruelty to a domesticated dog or cat shall be counted as a conviction for the purpose of determining whether a later conviction is a first or subsequent offense.

(3) In addition to such fine or imprisonment which may be imposed:

(a) The court shall order that restitution be made to the owner of such domesticated dog or cat. The measure for restitution in money shall be the current replacement value of such loss and the actual veterinarian fees, medicine, special supplies, loss of income and other costs incurred as a result of actions in violation of subsection (2) of this section; and

(b) The court may order that:

(i) The reasonable costs of sheltering, transporting and rehabilitating the domesticated dog or cat, and any other costs directly related to the care of the domesticated dog or cat, be reimbursed to:

1. Any law enforcement agency; or

2. Any agency or department of a political subdivision that is charged with the control, protection or welfare of domesticated or feral dogs or cats within the subdivision. The agency or department may

reimburse a nongovernmental organization for such costs, if the organization possesses nonprofit status under the United States Internal Revenue Code and has the purpose of protecting the welfare of, or preventing cruelty to, dogs or cats whether domesticated or feral.

(ii) The person convicted:

1. Receives a psychiatric or psychological evaluation and counseling or treatment for a length of time as prescribed by the court. The cost of any evaluation, counseling and treatment shall be paid by the offender upon order of the court, up to a maximum amount that is no more than the jurisdictional limit of the sentencing court.

2. Performs community service for a period not exceeding the applicable maximum term of imprisonment that may be imposed for conviction of the offense.

3. Be enjoined from employment in any position that involves the care of a domesticated dog or cat, or in any place where domesticated dogs or cats are kept or confined, for a period which the court deems appropriate.

4. If convicted of simple cruelty under this section, be prohibited from owning or possessing or residing with a domesticated dog or cat for any period of time not exceeding five (5) years from the date of sentencing, or any period of time not exceeding fifteen (15) years from the date of sentencing if the conviction involved four (4) or more counts of simple cruelty.

(c) The court shall order that any person convicted of an offense of aggravated cruelty under this section be prohibited from owning or possessing or residing with a domesticated dog or cat for a period not less than five (5) years nor more than fifteen (15) years from the date of sentencing.

(d) A person found in violation of a court order incorporating the provisions of paragraph (b)(ii)4. or (c) of this subsection may, in addition to any other punishment provided by law, be fined in an amount not exceeding One Thousand Dollars ($1,000.00) for each domesticated dog or cat unlawfully owned or possessed.

(e) Any domesticated dog or cat involved in a violation of a court order described in paragraph (d) of this subsection shall be forfeited to the state.

(4)(a) Nothing in this section shall be construed as prohibiting a person from:

(i) Defending himself or herself or another person from physical injury being threatened or caused by a domesticated or feral dog or cat.

(ii) Injuring or killing an unconfined domesticated or feral dog or cat on the property of the person, if the unconfined dog or cat is believed to constitute a threat of physical injury or damage to any domesticated animal under the care or control of such person.

(iii) Acting under the provisions of Section 95-5-19 to protect poultry or livestock from a trespassing dog that is in the act of chasing or killing the poultry or livestock, or acting to protect poultry or livestock from a trespassing cat that is in the act of chasing or killing the poultry or livestock.

(iv) Engaging in practices that are licensed or lawful under the Mississippi Veterinary Practice Act, Section 73-39-51 et seq., or engaging in activities by any licensed veterinarian while following accepted standards of practice of the profession within the State of Mississippi, including the euthanizing of a dog or cat.

(v) Rendering emergency care, treatment, or assistance to a dog or cat that is abandoned, ill, injured, or in distress, if the person rendering the care, treatment, or assistance is acting in good faith.

(vi) Performing activities associated with accepted agricultural and animal husbandry practices with regard to livestock, poultry or other animals, including those activities which involve:

1. Using dogs in such practices.
2. Raising, managing and using animals to provide food, fiber or transportation.
3. Butchering animals and processing food.

(vii) Training for, or participating in, a rodeo, equine activity, dog show, event sponsored by a kennel club or other bona fide organization that promotes the breeding or showing of dogs or cats, or any other competitive event which involves the lawful use of dogs or cats.

(viii) Engaging in accepted practices of dog or cat identification.

(ix) Engaging in lawful activities that are regulated by the Mississippi Department of Wildlife, Fisheries and Parks or the Mississippi Department of Marine Resources, including, without limitation, hunting, trapping, fishing, and wildlife and seafood management.

(x) Performing scientific, research, medical and zoological activities undertaken by research and education facilities or institutions that are:

1. Regulated under the provisions of the Animal Welfare Act, 7 USCS 2131 et seq., as in effect on July 1, 2011;
2. Regulated under the provisions of the Health Research Extension Act of 1985, Public Law No. 99-158; or
3. Subject to any other applicable state or federal law or regulation governing animal research as in effect on July 1, 2011.

(xi) Disposing of or destroying certain dogs under authority of Sections 19-5-50, 21-19-9 and 41-53-11, which allow counties, municipalities and certain law enforcement officers to destroy dogs running at large without proper identification indicating that such dogs have been vaccinated for rabies.

(xii) Engaging in professional pest control activities, including those activities governed by the Mississippi Pesticide Law of 1975, Section 69-23-1 et seq.; professional services related to entomology, plant pathology, horticulture, tree surgery, weed control or soil classification, as regulated under Section 69-19-1 et seq.; and any other pest control activities conducted in accordance with state law.

(xiii) Performing the humane euthanization of a dog or cat pursuant to Section 97-41-3.

(xiv) Engaging in the training of service dogs used to assist those with physical or mental health conditions.

(b) If the owner or person in control of a domesticated dog or cat is precluded, by natural or other causes beyond his reasonable control, from acting to prevent an act or omission that might otherwise constitute an allegation of the offense of simple cruelty to a domesticated dog or cat or the offense of aggravated cruelty to a domesticated dog or cat, then that person shall not be guilty of the offense. Natural or other causes beyond the reasonable control of the person include, without limitation, acts of God, declarations of disaster, emergencies, acts of war, earthquakes, hurricanes, tornadoes, fires, floods or other natural disasters.

(5) The provisions of this section shall not be construed to:

(a) Apply to any animal other than a domesticated dog or cat.

(b) Create any civil or criminal liability on the part of the driver of a motor vehicle if the driver unintentionally injures or kills a domesticated dog or cat as a result of the domesticated dog or cat being accidentally hit by the vehicle.

(6)(a) Except as otherwise provided in Section 97-35-47 for the false reporting of a crime, a person, who in good faith and acting without malice, reports a suspected incident of simple cruelty to a domesticated dog or cat, or aggravated cruelty to a domesticated dog or cat, to a local animal control, protection or welfare organization, a local law enforcement agency, or the Mississippi Department of Public Safety, shall be immune from civil and criminal liability for reporting the incident.

(b) A veterinarian licensed in Mississippi or a person acting at the direction of a veterinarian licensed in Mississippi, who in good faith and acting without malice, participates in the investigation of an alleged offense of simple or aggravated cruelty to a domesticated dog or cat, or makes a decision or renders services regarding the care of a domesticated or feral dog or cat that is involved in the investigation, shall be immune from civil and criminal liability for those acts.

(7) Other than an agency or department of a political subdivision that is charged with the control, protection or welfare of dogs or cats within the subdivision, any organization that has the purpose of protecting the welfare of, or preventing cruelty to, domesticated dogs or cats, shall register the organization with the sheriff of the county in which the organization operates a physical facility for the protection, welfare or shelter of dogs or cats, on or before the first day of October each year. The provisions of this subsection (7) shall apply to any organization that has the purpose of protecting the welfare of dogs or cats, or preventing cruelty to dogs or cats, regardless of whether the organization also protects animals other than domesticated dogs or cats.

(8) Nothing in this section shall limit the authority of a municipality or board of supervisors to adopt ordinances, rules, regulations or resolutions which may be, in whole or in part, more restrictive than the provisions of this section, and in those cases, the more restrictive ordinances, rules, regulations or resolutions will govern.

HISTORY: Laws, 1993, ch. 438, § 3; Laws, 2006, ch. 491, § 1; Laws, 2011, ch.

536, § 1, eff from and after passage (approved Apr. 26, 2011); Laws, 2020, ch. 468, § 1, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment, in (2)(a), inserted "domesticated" in the first and second sentences, and added the last sentence; redesignated former (2)(b) as (2)(b)(i), and therein, in the first sentence, inserted "to death, crush," "drown, suffocate or impale" and "domesticated" the second time it appears, and added the last sentence; rewrote former (2)(b)(i), which read: "A person who is convicted of a first offense of aggravated cruelty to a dog or cat shall be guilty of a misdemeanor and fined not more than Two Thousand Five Hundred Dollars ($2,500.00), or imprisoned for not more than six (6) months, or both," and redesignated it (2)(b)(ii); rewrote former (2)(b)(ii), which read: "A person who is convicted of a second or subsequent offense of aggravated cruelty to a dog or cat, the offenses being committed within a period of five (5) years, shall be guilty of a felony and fined not more than Five Thousand Dollars ($5,000.00) and imprisoned for not less than one (1) year nor more than five (5) years," and redesignated it (2)(b)(iii); deleted former (2)(d), which provided that multiple alleged acts of simple or aggravated cruelty to a dog or cat that occurred at the same time constituted a single offense; in (3)(a) and (b)(i), inserted "domesticated" everywhere it appears; in (3)(b)(i)2, inserted "domesticated or feral" and "whether domesticated or feral"; in (3)(b)(ii), inserted "domesticated" twice in 3, and added 4; added (3)(c) through (e); in (4)(a), inserted "domesticated or feral" in (i) and (ii), and added (xiv); in (4)(b), (5), (6)(a), and (7), inserted "domesticated" everywhere it appears; and in (6)(b), inserted "domesticated" the first time it appears, and inserted "domesticated or feral."

JUDICIAL DECISIONS

ANALYSIS

1. Constitutionality.
2. Double jeopardy.

1. Constitutionality.

Ordinary person giving a fair reading of Miss. Code Ann. § 97-41-16 would have concluded that defendant's conduct in shooting his neighbor's dog was prohibited, and that § 97-41-16 was not unconstitutionally so vague that it would not have given defendant sufficient notice that the conduct in which he engaged was proscribed; section 97-41-16 was not unconstitutionally vague under the due process clause. Hill v. State, 853 So. 2d 100, 2003 Miss. LEXIS 371 (Miss. 2003).

2. Double jeopardy.

Defendant's separate convictions for simple cruelty to defendant's dogs and for simple cruelty to defendant's cats—alleged to have occurred on defendant's property at the same time—subjected defendant to double jeopardy because defendant should have received only one conviction for simple cruelty committed against a combination of dogs and cats as the statute made defendant's conduct a single offense. Dancy v. State, 287 So. 3d 931, 2020 Miss. LEXIS 8 (Miss. 2020).

RESEARCH REFERENCES

ALR.

What constitutes offense of cruelty to animals–modern cases. 6 A.L.R.5th 733.

Propriety, Measure, and Elements of Restitution to Which Victim is Entitled Under State Criminal Statute – Cruelty to, Killing, or Abandonment of, Animals. 45 A.L.R.6th 435.

Validity, Construction, and Application of Animal Welfare Act (7 U.S.C. § 2131 et seq.).

Am. Jur.

4 Am. Jur. 2d, Animals §§ 23 et seq.

52 Am. Jur. 2d, Malicious Mischief and Related Offenses § 11.

CJS.

3B C.J.S., Animals §§ 324-332, 334-

338, 340-345, 349-353, 361, 365-370, 462-482.

§ 97-41-17. Poisons; administering to animals.

Every person who shall willfully and unlawfully administer any poison to any horse, mare, colt, mule, jack, jennet, cattle, deer, dog, cat, hog, sheep, chicken, duck, goose, turkey, pea-fowl, guinea-fowl, or partridge, or shall maliciously expose any poison substance with intent that the same should be taken or swallowed by any horse, mare, colt, mule, jack, jennet, cattle, dog, cat, hog, sheep, chicken, duck, goose, turkey, pea-fowl, guinea-fowl, or partridge, shall, upon conviction, be punished by imprisonment in the Penitentiary not exceeding three (3) years, or in the county jail not exceeding one (1) year, and by a fine not exceeding Five Hundred Dollars ($500.00).

HISTORY: Codes, Hutchinson's 848, ch. 64, art. 12, Title 7(13); 1857, ch. 64, art. 215; 1871, § 2671; 1880, § 2938; 1892, § 1256; 1906, § 1332; Hemingway's 1917, § 1065; 1930, § 1096; 1942, § 2329; Laws, 2011, ch. 536, § 7, eff from and after passage (approved Apr. 26, 2011).

Cross References — Regulation of sale of poisons, etc., see §§ 41-29-1 et seq.

Poisoning food or drink, generally, see § 97-3-61.

Poisoning person with intent to kill, see § 97-3-63.

Criminal offenses in sale of poisons, see §§ 97-27-21 et seq.

RESEARCH REFERENCES

ALR.

Cat as subject of larceny. 55 A.L.R.4th 1080.

What constitutes offense of cruelty to animals–modern cases. 6 A.L.R.5th 733.

§ 97-41-18. Prohibition against intentionally conducting fight between canine and hog; exceptions; penalties.

(1) For the purposes of this section, "hog" means a pig, swine or boar.

(2) It is unlawful for any person to organize or conduct any commercial event commonly referred to as a "catch" wherein there is a display of combat or fighting among one or more domestic or feral canines and feral or domestic hogs and in which it is intended or reasonably foreseeable that the canines or hogs would be injured, maimed, mutilated or killed.

(3) It is unlawful for any person to organize, conduct or financially or materially support any event prohibited by this section.

(4) The provisions of this section shall not apply to any competitive event in which canines trained for hunting or herding activities are released in an open or enclosed area to locate and corner hogs, commonly referred to as a "bay event," and in which competitive points are deducted if a hog is caught and held.

(5) The provisions of this section shall not apply to the lawful hunting of hogs with canines or the use of canines for the management, farming or herding of hogs which are livestock or the private training of canines for the

purposes enumerated in this subsection provided that such training is conducted for the field using accepted dog handling and training practices and is not in violation of the provisions of subsection (1) of this section.

(6) Any person convicted under the provisions of this section shall be fined not more than One Thousand Dollars ($1,000.00), imprisoned for not more than six (6) months, or both.

HISTORY: Laws, 2006, ch. 491, § 2; Laws, 2008, ch. 387, § 1; Laws, 2012, ch. 421, § 1, eff from and after passage (approved Apr. 18, 2012).

OPINIONS OF THE ATTORNEY GENERAL

Interpretation of the phrase "commercial event" as an event primarily organized for the purpose of financial gain is correct. The term would also designate an event that is advertised. Dedeaux, May 12, 2006, A.G. Op. 06-0171.

§ 97-41-19. Dog fights.

(1) If any person (a) shall sponsor, promote, stage or conduct a fight or fighting match between dogs, or (b) shall wager or bet, promote or encourage the wagering or betting of any money or other valuable thing upon any such fight or upon the result thereof, or (c) shall own or possess a dog with the intent to willfully enter it or to participate in any such fight, or (d) shall train or transport a dog for the purposes of participation in any such fight, or (e) shall own, possess, buy, sell, transfer, or manufacture paraphernalia for the purpose of engaging in or otherwise promoting or facilitating such fight, the person shall be guilty of a felony and, upon conviction for a first offense, shall be punished by a fine of not less than One Thousand Dollars ($1,000.00) nor more than Five Thousand Dollars ($5,000.00), or by imprisonment in the State Penitentiary for a term of not less than one (1) nor more than five (5) years, or by both such fine and imprisonment, in the discretion of the court.

Upon conviction for a second or subsequent offense, the person shall be guilty of a felony and punished by a fine of not less than Five Thousand Dollars ($5,000.00), nor more than Ten Thousand Dollars ($10,000.00), or by imprisonment in the custody of the Department of Corrections for a term of not less than three (3) years, nor more than ten (10) years, or both.

(2) If any person shall be present, as a spectator, at any location where preparations are being made for an exhibition of a fight between dogs with the intent to be present at such preparations, or if any person shall be present at an exhibition of a fight between dogs with the intent to be present at such exhibition, he shall be guilty of a felony and, upon conviction, shall be punished by a fine of not less than Five Hundred Dollars ($500.00) nor more than Five Thousand Dollars ($5,000.00), or by imprisonment in the State Penitentiary for a term of not more than one (1) year, or by both such fine and imprisonment, in the discretion of the court.

(3) Any law enforcement officer making an arrest under subsection (1) of this section may lawfully take possession of all paraphernalia, implements, equipment or other property, including dogs, used in violation of subsection (1)

of this section. Such officer shall file with the circuit court of the county within which the alleged violation occurred an affidavit stating therein (a) the name of the person charged, (b) a description of the property taken, (c) the time and place of the taking, (d) the name of the person who claims to own such property, if known, and (e) that the affiant has reason to believe, stating the ground of such belief, that the property taken was used in such violation. He shall thereupon deliver the property to such court which shall, by order in writing, place such paraphernalia, implements, equipment, or other property, including dogs, in the custody of the law enforcement agency, or its designee. All paraphernalia, implements, equipment, or other property, excluding dogs forfeited under subsection (4) of this section, are to be kept by such custodian until the conviction or final discharge of the accused, and shall then send a copy of such order without delay to the district attorney of the county. The custodian named and designated in such order shall immediately assume the custody of such property and shall retain same, subject to order of the court.

(4) Within ten (10) days of the seizure of dogs under this section, the owner of the dogs may request a hearing to determine the disposition of the dogs. The court shall follow the procedure and guidelines as set out in Section 97-41-2(2) through (8) in conducting the hearing and determining the disposition of the dogs. Nothing in subsection (1) of this section shall prohibit any of the following:

(a) The use of dogs in the management of livestock, by the owner of such livestock or other persons in lawful custody thereof;

(b) The use of dogs in lawful hunting; and

(c) The training of dogs for any purpose not prohibited by law.

(5) For purposes of this section, the term "paraphernalia" means equipment, products, implements and materials of any kind that are used, intended for use, or designed for use in the training, preparation, conditioning, or furtherance of dog fighting, and includes, but is not limited to, the following: breaking sticks, cat mills, treadmills, fighting pits, spring poles, unprescribed veterinary medicine, or treatment supplies.

In determining whether an object is paraphernalia, a court shall consider any prior convictions under federal or state law relating to animal fighting, the proximity of the object in time and space to the direct violation of this section, direct or circumstantial evidence of the intent of the person to deliver the object to persons whom he or she knows or should reasonably know intends to use the object to facilitate a violation of this section, oral or written instructions provided with or in the vicinity of the object concerning its use, descriptive materials accompanying the object which explain or depict its use, and any other relevant factors.

HISTORY: Laws, 1987, ch. 489, § 1, eff from and after July 1, 1987; Laws, 2018, ch. 456, § 1, eff from and after July 1, 2018.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

JUDICIAL DECISIONS

1. Euthanization of dogs.

Dogs seized under statute could be humanely euthanized before final disposition of criminal case by reason of the physical condition of the dog; statute meant to prosecute individuals who engaged in business of dog fighting, betting, and attendance, statute made provisions not only for what constituted crime, but seizure and disposition of those things utilized in perpetration of the crime. 32 Pit Bulldogs v. County of Prentiss, 808 So. 2d 971, 2002 Miss. LEXIS 54 (Miss. 2002).

RESEARCH REFERENCES

ALR.

Validity and construction of statute, ordinance, or regulation applying to specific dog breeds, such as "pit bulls" or "bull terriers". 80 A.L.R.4th 70.

What constitutes offense of cruelty to animals–modern cases. 6 A.L.R.5th 733.

Validity, Construction, and Application of Criminal Statutes and Ordinances to Prosecution for Dogfighting. 68 A.L.R.6th 115.

§ 97-41-21. Harassment of guide, leader, hearing, service or support dogs; penalties.

(1) An individual shall not do either of the following:

(a) Willfully and maliciously assault, beat, harass, injure, or attempt to assault, beat, harass or injure, a dog that he or she knows or has reason to believe is a guide or leader dog for a blind individual, a hearing dog for a deaf or audibly impaired individual, a service dog for a physically limited individual, or a support dog for a mobility impaired person as described in Sections 43-6-151 through 43-6-155.

(b) Willfully and maliciously impede or interfere with, or attempt to impede or interfere with, duties performed by a dog that he or she knows or has reason to believe is a guide or leader dog for a blind individual, a hearing dog for a deaf or audibly impaired individual, a service dog for a physically limited individual, or a support dog for a mobility impaired person as described in Sections 43-6-151 through 43-6-155.

(2) An individual who violates subsection (1) is guilty of a misdemeanor punishable by imprisonment for not more than ninety (90) days or a fine of not more than Five Hundred Dollars ($500.00), or both.

(3) In a prosecution for a violation of subsection (1), evidence that the defendant initiated or continued conduct directed toward a dog described in subsection (1) after being requested to avoid or discontinue that conduct or similar conduct by a blind, deaf, audibly impaired, physically limited or mobility impaired individual being served or assisted by the dog shall give rise to a rebuttable presumption that the conduct was initiated or continued maliciously.

(4) A conviction and imposition of a sentence under this section does not prevent a conviction and imposition of a sentence under Section 97-41-16 pertaining to the offenses of simple or aggravated cruelty to a dog or cat, or any other applicable provision of law.

(5) As used in this section:

(a) "Audibly impaired" means the inability to hear air conduction thresholds at an average of forty (40) decibels or greater in the individual's better ear.

(b) "Blind" means having a visual acuity of 20/200 or less in the individual's better eye with correction, or having a limitation of the individual's field of vision such that the widest diameter of the visual field subtends an angular distance not greater than twenty (20) degrees.

(c) "Deaf" means the individual's hearing is totally impaired or the individual's hearing, with or without amplification, is so seriously impaired that the primary means of receiving spoken language is through other sensory input, including, but not limited to, lip reading, sign language, finger spelling or reading.

(d) "Harass" means to engage in any conduct directed toward a guide, leader, hearing or service dog that is likely to impede or interfere with the dog's performance of its duties or that places the blind, deaf, audibly impaired or physically limited individual being served or assisted by the dog in danger of injury.

(e) "Injure" means to cause any physical injury to a dog described in subsection (1).

(f) "Maliciously" means any of the following:

(i) With intent to assault, beat, harass or injure a dog described in subsection (1).

(ii) With intent to impede or interfere with duties performed by a dog described in subsection (1).

(iii) With intent to disturb, endanger or cause emotional distress to a blind, deaf, audibly impaired or physically limited individual being served or assisted by a dog described in subsection (1).

(iv) With knowledge that the individual's conduct will, or is likely to, harass or injure a dog described in subsection (1).

(v) With knowledge that the individual's conduct will, or is likely to, impede or interfere with duties performed by a dog described in subsection (1).

(vi) With knowledge that the individual's conduct will, or is likely to, disturb, endanger or cause emotional distress to a blind, deaf, audibly impaired or physically limited individual being served or assisted by a dog described in subsection (1).

(g) "Physically limited" means having limited ambulatory abilities and includes, but is not limited to, having a temporary or permanent impairment or condition that does one or more of the following:

(i) Causes the individual to use a wheelchair or walk with difficulty or insecurity.

(ii) Affects sight or hearing to the extent that an individual is insecure or exposed to danger.

(iii) Causes faulty coordination.

(iv) Reduces mobility, flexibility, coordination or perceptiveness.

HISTORY: Laws, 1997, ch. 426, § 1; Laws, 2011, ch. 536, § 8, eff from and after passage (approved Apr. 26, 2011).

Cross References — Right to be accompanied by guide dog, see §§ 43-6-7, 43-6-9. Penalties for interference of rights of handicapped persons, see § 43-6-11.

§ 97-41-23. Injury and killing of public service animals; penalties.

(1) It is unlawful for any person to willfully and maliciously taunt, torment, tease, beat, strike, or to administer, expose or inject any desensitizing drugs, chemicals or substance to any public service animal. Any person who violates this section is guilty of a misdemeanor, and upon conviction thereof shall be fined not more than Two Hundred Dollars ($200.00) and be imprisoned not more than five (5) days, or both.

(2) Any person who, without just cause, purposely kills or injures any public service animal is guilty of a felony and upon conviction shall be fined not more than Five Thousand Dollars ($5,000.00) and be imprisoned not more than five (5) years, or both.

(3) For purposes of this section, the term "public service animal" means any animal trained and used to assist a law enforcement agency, public safety entity or search and rescue agency.

(4) A conviction and imposition of a sentence under this section does not prevent a conviction and imposition of a sentence under Section 97-41-16 pertaining to the offenses of simple or aggravated cruelty to a dog or cat, or under any other applicable provision of law.

(5) Any person guilty of violating subsection (2) of this section shall also be required to make restitution to the law enforcement agency or owner aggrieved thereby.

(6) The provisions of this section shall not apply to the lawful practice of veterinary medicine.

HISTORY: Laws, 2003, ch. 498, § 1; Laws, 2011, ch. 536, § 9, eff from and after passage (approved Apr. 26, 2011).

RESEARCH REFERENCES

ALR.

What Constitutes "Service Animal" and Accommodation Thereof, Under Americans with Disabilities Act (ADA). 75 A.L.R. Fed. 2d 49.

CHAPTER 43.

RACKETEER INFLUENCED AND CORRUPT ORGANIZATION ACT (RICO)

Sec.
97-43-1. Short title.
97-43-3. Definitions.
97-43-3.1. Organized theft or fraud enterprise.
97-43-5. Prohibited activities.
97-43-7. Penalties.
97-43-9. Powers and duties of circuit court; civil forfeiture of property; seizure; civil proceedings; injunctions; damages; attorneys fees; jury trial; intervention by attorney general; limitation of actions.
97-43-11. Seizure and forfeiture of property; procedures.

§ 97-43-1. Short title.

This chapter shall be known and may be cited as the "Racketeer Influenced and Corrupt Organization Act."

HISTORY: Laws, 1984, ch. 433, § 1; reenacted, Laws, 1986, ch. 461, § 1, eff from and after passage (approved April 11, 1986).

Editor's Notes — Laws of 1984, ch. 433, § 7, provided that this section would stand repealed from and after June 30, 1986. Laws of 1986, ch. 461, § 7, removed the repeal date specified in ch. 433, Laws of 1984.

Federal Aspects— Federal anti-racketeering act, generally, see 18 USCS §§ 1951 et seq.

JUDICIAL DECISIONS

1. In general.

State RICO Act does not set out level of intent required for prosecution of usury as collection of unlawful debt and, thus, RICO would omit essential element of crime and would be too vague to satisfy due process; although RICO is general intent crime that takes its intent from underlying crimes, level of intent for usury is defined by civil statute and would not apply to criminal prosecution. State v. Roderick, 704 So. 2d 49, 1997 Miss. LEXIS 313 (Miss. 1997), cert. denied, 524 U.S. 926, 118 S. Ct. 2319, 141 L. Ed. 2d 694, 1998 U.S. LEXIS 3900 (U.S. 1998).

RESEARCH REFERENCES

ALR.

Lawfulness of seizure of property used in violation of law as prerequisite to forfeiture action or proceeding. 8 A.L.R.3d 473.

Criminal prosecutions under state RICO statutes for engaging in organized criminal activity. 89 A.L.R.5th 629.

Validity, construction and effect of 18 USCS § 1952, making it a federal offense to use interstate or foreign travel or transportation in aid of racketeering enterprises. 1 A.L.R. Fed. 838.

Elements of offense proscribed by the Hobbs Act (18 USCS § 1951) against racketeering in interstate or foreign commerce. 4 A.L.R. Fed. 881.

Construction and application of provision of Organized Crime Control Act of 1970 (18 USCS § 1965(a)) that civil action or proceeding under Act against any person may be instituted in Federal District Court for district in which such person resides, is found, has agent, or transacts his affairs. 20 A.L.R. Fed. 803.

Validity, construction, and application of 18 USCS § 1962, making unlawful certain acts involving "pattern of racketeering activity" or "collection of an unlawful debt,". 29 A.L.R. Fed. 826.

What is an "enterprise," as defined at 18 USCS § 1961(4), for purposes of the Racketeer Influenced and Corrupt Organizations (RICO) statute (18 USCS §§ 1961 et seq). 52 A.L.R. Fed. 818.

Construction and application of provision of Organized Crime Control Act of 1970 (18 USCS § 1963(a)) that whoever violated 18 USCS § 1962 shall forfeit to United States any interest in unlawful enterprise. 61 A.L.R. Fed. 879.

Commencement of limitation period for criminal prosecution under Racketeer Influenced and Corrupt Organizations Act (RICO), 18 USCS secs. 1961-1968. 89 A.L.R. Fed. 887.

Validity, construction, and application of Racketeer Influenced and Corrupt Organization Act, 18 U.S.C.A. § et seq. Supreme Court cases. 171 A.L.R. Fed. 1.

Am. Jur.

67 Am. Jur. 2d, Robbery §§ 131-136.

10 Am. Jur. Proof of Facts 3d 289, "Pattern of Racketeering Activity" Under the Racketeer Influence and Corrupt Organization Act (RICO).

CJS.

15 C.J.S. Commerce § 161.

15A C.J.S. Conspiracy §§ 250, 291.

22 C.J.S. Criminal Law § 233.

51 C.J.S. Labor Relations § 12.

Lawyers' Edition.

Validity, construction, and application of the Hobbs Act (18 USCS § 1951) against racketeering in interstate or foreign commerce–federal cases. 4 L. Ed. 2d 1843.

Law Reviews.

Ray, Constitutional and statutory authority of the Attorney General to prosecute actions. 59 Miss. L. J. 165, Spring, 1989.

§ 97-43-3. Definitions.

The following terms shall have the meanings ascribed to them herein unless the context requires otherwise:

(a) "Racketeering activity" means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce or intimidate another person to commit any crime which is chargeable under the following provisions of the Mississippi Code of 1972:

(1) Section 97-19-71, which relates to fraud in connection with any state or federally funded assistance programs.

(2) Section 75-71-735, which relates to violations of the Mississippi Securities Act.

(3) Sections 45-13-105, 45-13-109, 97-37-23 and 97-37-25, which relate to unlawful possession, use and transportation of explosives.

(4) Sections 97-3-19 and 97-3-21, which relate to murder.

(5) Section 97-3-7(2), which relates to aggravated assaults.

(6) Section 97-3-53, which relates to kidnapping.

(7) Sections 97-3-73 through 97-3-83, which relate to robbery.

(8) Sections 97-17-23 through 97-17-37, which relate to burglary.

(9) Sections 97-17-1 through 97-17-13, which relate to arson.

(10) Sections 97-29-49 and 97-29-51, which relate to prostitution.

(11) Sections 97-5-5 and 97-5-31 through 97-5-37, which relate to the

exploitation of children and enticing children for concealment, prostitution or marriage.

(12) Section 41-29-139, which relates to violations of the Uniform Controlled Substances Law; provided, however, that in order to be classified as "racketeering activity," such offense must be punishable by imprisonment for more than one (1) year.

(13) Sections 97-21-1 through 97-21-63, which relate to forgery and counterfeiting.

(14) Sections 97-9-1 through 97-9-77, which relate to offenses affecting administration of justice.

(15) Sections 97-33-1 through 97-33-49, which relate to gambling and lotteries.

(16) Section 97-3-54 et seq., which relate to human trafficking.

(b) "Unlawful debt" means money or any other thing of value constituting principal or interest of a debt which is legally unenforceable, in whole or in part, because the debt was incurred or contracted in gambling activity in violation of state law or in the business of lending money at a rate usurious under state law, where the usurious rate is at least twice the enforceable rate.

(c) "Enterprise" means any individual, sole proprietorship, partnership, corporation, union or other legal entity, or any association or group of individuals associated in fact although not a legal entity. It includes illicit as well as licit enterprises and governmental, as well as other, entities.

(d) "Pattern of racketeering activity" means engaging in at least two (2) incidents of racketeering conduct that have the same or similar intents, results, accomplices, victims, or methods of commission or otherwise are interrelated by distinguishing characteristics and are not isolated incidents, provided at least one (1) of such incidents occurred after July 1, 1984, and that the last of such incidents occurred within five (5) years after a prior incident of racketeering conduct.

HISTORY: Laws, 1984, ch. 433, § 2; Laws, 1985, ch. 321; reenacted, Laws, 1986, ch. 461, § 2; Laws, 2013, ch. 543, § 13, eff from and after July 1, 2013.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in a statutory reference at the beginning of (a)(16) by substituting "Section 97-3-54 et seq." for "Sections 97-3-54 et seq." The Joint Committee ratified the correction at its August 1, 2013, meeting.

Editor's Notes — Section 97-17-27, which defined breaking the inner door of a dwelling as burglary and is included in the span of sections referred to in (a)(8), was repealed by Laws of 1996, ch. 519 §§ 2-4, effective from and after passage (approved April 11, 1996).

JUDICIAL DECISIONS

1. In general.

State's RICO Act does not limit enforcement to types of unlawful loans traditionally associated with loansharking and intimidation or brutality. State v. Roderick, 704 So. 2d 49, 1997 Miss. LEXIS 313

(Miss. 1997), cert. denied, 524 U.S. 926, 118 S. Ct. 2319, 141 L. Ed. 2d 694, 1998 U.S. LEXIS 3900 (U.S. 1998).

State RICO Act does not set out level of intent required for prosecution of usury as collection of unlawful debt and, thus, RICO would omit essential element of crime and would be too vague to satisfy due process; although RICO is general intent crime that takes its intent from underlying crimes, level of intent for usury is defined by civil statute and would not apply to criminal prosecution. State v. Roderick, 704 So. 2d 49, 1997 Miss. LEXIS 313 (Miss. 1997), cert. denied, 524 U.S. 926, 118 S. Ct. 2319, 141 L. Ed. 2d 694, 1998 U.S. LEXIS 3900 (U.S. 1998).

All crimes used as bases for State RICO Act prosecution are outlined in RICO Act, and there are cross-references between RICO and underlying criminal statutes, and, therefore, application of RICO to usury would violate due process for lack of notice that usury is prosecutable offense; no reference to RICO is made in usury statute or other statutes on interest and finance charges, and person of ordinary intelligence would not be given fair warning that usury is prosecutable offense. State v. Roderick, 704 So. 2d 49, 1997 Miss. LEXIS 313 (Miss. 1997), cert. denied, 524 U.S. 926, 118 S. Ct. 2319, 141 L. Ed. 2d 694, 1998 U.S. LEXIS 3900 (U.S. 1998).

Usury is not criminal under State law and, thus, application of State's RICO Act to usury would criminalize activity without fair notice and definite warning of prohibited conduct and would violate due process. State v. Roderick, 704 So. 2d 49, 1997 Miss. LEXIS 313 (Miss. 1997), cert. denied, 524 U.S. 926, 118 S. Ct. 2319, 141 L. Ed. 2d 694, 1998 U.S. LEXIS 3900 (U.S. 1998).

Evidence that State Attorney General's office encouraged check cashers' association to lobby Legislature for regulation of their industry supported determination that State did not give check cashing businesses adequate notice that usury could be prosecuted under State RICO Act and, thus, that RICO was unconstitutionally vague as applied to check cashers; contact between check cashers and Attorney General's office led check cashers to believe that their business was legal. State v. Roderick, 704 So. 2d 49, 1997 Miss. LEXIS 313 (Miss. 1997), cert. denied, 524 U.S. 926, 118 S. Ct. 2319, 141 L. Ed. 2d 694, 1998 U.S. LEXIS 3900 (U.S. 1998).

RESEARCH REFERENCES

Am. Jur.

10 Am. Jur. Proof of Facts 3d 289, "Pattern of Racketeering Activity" Under the Racketeer Influence and Corrupt Organization Act (RICO).

§ 97-43-3.1. Organized theft or fraud enterprise.

(1) It shall be unlawful for any person to conduct, organize, supervise or manage, directly or indirectly, an organized theft or fraud enterprise. Organized theft or fraud enterprise applies to conduct proscribed in the following provisions:

(a) Section 97-23-93, which relates to shoplifting;

(b) Sections 97-45-3 and 97-45-5, which relate to computer fraud;

(c) Section 97-45-19, which relates to fraudulent use of identity;

(d) Section 97-9-79, which relates to false information;

(e) Section 97-19-83, which relates to fraud by mail or other means of communication;

(f) Section 97-19-85, which relates to the fraudulent use of a social security number, credit card or debit card number or other identifying information; and

(g) Section 97-45-19, which relates to obtaining personal identity information of another person without authorization.

(2) It shall be unlawful for any person who has, with criminal intent, received any proceeds or services derived, directly or indirectly, from an organized theft or fraud enterprise.

(3) For the purposes of this section, an "organized theft or fraud enterprise" means any association of two (2) or more persons who engage in the conduct of or are associated for the purpose of effectuating the transfer or sale of merchandise, services or information that has a pecuniary value that causes a loss to the victim.

(4) The value of the merchandise or services or the pecuniary loss involved in a violation of this section may be aggregated in determining the grade of the offense where the acts or conduct constituting a violation were committed pursuant to one (1) scheme or course of conduct, whether from the same person or several persons, or were committed in furtherance of or in conjunction with an organized theft or fraud enterprise.

(5) Any person convicted under this section shall be, upon conviction, guilty of a felony and punished by a term of imprisonment of not more than twenty (20) years or fined not more than Twenty-five Thousand Dollars ($25,000.00), or both.

HISTORY: Laws, 2014, ch. 457, § 36, eff from and after July 1, 2014.

§ 97-43-5. Prohibited activities.

(1) It is unlawful for any person who has with criminal intent received any proceeds derived, directly or indirectly, from a pattern of racketeering activity or through the collection of an unlawful debt to use or invest, whether directly or indirectly, any part of such proceeds or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise.

(2) It is unlawful for any person, through a pattern of racketeering activity or through the collection of an unlawful debt, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property.

(3) It is unlawful for any person employed by, or associated with, any enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt.

(4) It is unlawful for any person to conspire to violate any of the provisions of subsections (1), (2) or (3) of this section.

HISTORY: Laws, 1984, ch. 433, § 3; reenacted, Laws, 1986, ch. 461, § 3, eff from and after passage (approved April 11, 1986).

Editor's Notes — Laws of 1984, ch. 433, § 7, provided that this section would stand repealed from and after June 30, 1986. Laws of 1986, ch. 461, § 7, removed the repeal date specified in ch. 433, Laws, 1984.

JUDICIAL DECISIONS

1. In general.

Because neither debtor's former president nor anyone on his behalf appeared at trial, the trustee's testimony and evidence introduced at trial was not contradicted and thus, the court found that the president, while employed or associated with debtor, fraudulently diverted money from the estate and conducted the affairs of debtor through a pattern of racketeering activity in violation of the federal and Mississippi RICO Acts, and that the trustee was entitled to treble damages, However, the trustee did not meet her burden of proof with respect to a former employee of debtor. Johnson v. Cmty. Home Fin. Servs. (In re Cmty. Home Fin. Servs.), — B.R. —, 2018 Bankr. LEXIS 557 (Bankr. S.D. Miss. Feb. 27, 2018).

All crimes used as bases for State RICO Act prosecution are outlined in RICO Act, and there are cross-references between RICO and underlying criminal statutes, and, therefore, application of RICO to usury would violate due process for lack of notice that usury is prosecutable offense; no reference to RICO is made in usury statute or other statutes on interest and finance charges, and person of ordinary intelligence would not be given fair warning that usury is prosecutable offense. State v. Roderick, 704 So. 2d 49, 1997 Miss. LEXIS 313 (Miss. 1997), cert. denied, 524 U.S. 926, 118 S. Ct. 2319, 141 L. Ed. 2d 694, 1998 U.S. LEXIS 3900 (U.S. 1998).

State's RICO Act does not limit enforcement to types of unlawful loans traditionally associated with loansharking and intimidation or brutality. State v. Roderick, 704 So. 2d 49, 1997 Miss. LEXIS 313 (Miss. 1997), cert. denied, 524 U.S. 926, 118 S. Ct. 2319, 141 L. Ed. 2d 694, 1998 U.S. LEXIS 3900 (U.S. 1998).

Evidence that State Attorney General's office encouraged check cashers' association to lobby Legislature for regulation of their industry supported determination that State did not give check cashing businesses adequate notice that usury could be prosecuted under State RICO Act and, thus, that RICO was unconstitutionally vague as applied to check cashers; contact between check cashers and Attorney General's office led check cashers to believe that their business was legal. State v. Roderick, 704 So. 2d 49, 1997 Miss. LEXIS 313 (Miss. 1997), cert. denied, 524 U.S. 926, 118 S. Ct. 2319, 141 L. Ed. 2d 694, 1998 U.S. LEXIS 3900 (U.S. 1998).

Usury is not criminal under State law and, thus, application of State's RICO Act to usury would criminalize activity without fair notice and definite warning of prohibited conduct and would violate due process. State v. Roderick, 704 So. 2d 49, 1997 Miss. LEXIS 313 (Miss. 1997), cert. denied, 524 U.S. 926, 118 S. Ct. 2319, 141 L. Ed. 2d 694, 1998 U.S. LEXIS 3900 (U.S. 1998).

State RICO Act does not set out level of intent required for prosecution of usury as collection of unlawful debt and, thus, RICO would omit essential element of crime and would be too vague to satisfy due process; although RICO is general intent crime that takes its intent from underlying crimes, level of intent for usury is defined by civil statute and would not apply to criminal prosecution. State v. Roderick, 704 So. 2d 49, 1997 Miss. LEXIS 313 (Miss. 1997), cert. denied, 524 U.S. 926, 118 S. Ct. 2319, 141 L. Ed. 2d 694, 1998 U.S. LEXIS 3900 (U.S. 1998).

RESEARCH REFERENCES

Am. Jur.

10 Am. Jur. Proof of Facts 3d 289, "Pattern of Racketeering Activity" Under the Racketeer Influence and Corrupt Organization Act (RICO).

§ 97-43-7. Penalties.

(1) Any person convicted of engaging in activity in violation of the

provisions of this chapter shall be guilty of a felony and, upon conviction, shall be fined not more than Twenty-five Thousand Dollars ($25,000.00) or imprisoned not more than twenty (20) years, or both.

(2) In lieu of a fine otherwise authorized by law, any person convicted of engaging in conduct in violation of the provisions of this chapter, through which he derived pecuniary value, or by which he caused personal injury or property damage or other loss, may be sentenced to pay a fine that does not exceed three (3) times the gross value gained or three (3) times the gross loss caused, whichever is the greater, plus court costs and the costs of investigation and prosecution, reasonably incurred.

(3) The court shall hold a hearing to determine the amount of the fine authorized by subsection (2) of this section.

(4) For the purposes of subsection (2) of this section, "pecuniary value" means:

(a) Anything of value in the form of money, a negotiable instrument, or a commercial interest or anything else the primary significance of which is economic advantage; or

(b) Any other property or service that has a value in excess of One Hundred Dollars ($100.00).

HISTORY: Laws, 1984, ch. 433, § 4; reenacted, 1986, ch. 461, § 4, eff from and after passage (approved April 11, 1986).

Editor's Notes — Laws of 1984, ch. 433, § 7, provided that this section would stand repealed from and after June 30, 1986. Laws of 1986, ch. 461, § 7, removed the repeal date specified in ch. 433, Laws of 1984.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

State RICO Act does not set out level of intent required for prosecution of usury as collection of unlawful debt and, thus, RICO would omit essential element of crime and would be too vague to satisfy due process; although RICO is general intent crime that takes its intent from underlying crimes, level of intent for usury is defined by civil statute and would not apply to criminal prosecution. State v. Roderick, 704 So. 2d 49, 1997 Miss. LEXIS 313 (Miss. 1997), cert. denied, 524 U.S. 926, 118 S. Ct. 2319, 141 L. Ed. 2d 694, 1998 U.S. LEXIS 3900 (U.S. 1998).

§ 97-43-9. Powers and duties of circuit court; civil forfeiture of property; seizure; civil proceedings; injunctions; damages; attorneys fees; jury trial; intervention by attorney general; limitation of actions.

(1) Any circuit court may, after making due provision for the rights of innocent persons, enjoin violations of the provisions of this chapter by issuing appropriate orders and judgments, including, but not limited to:

(a) Ordering any defendant to divest himself of any interest in any enterprise, including real property.

(b) Imposing reasonable restrictions upon the future activities or investments of any defendant, including but not limited to, prohibiting any defendant from engaging in the same type of endeavor as the enterprise in which he was engaged in violation of the provisions of this chapter.

(c) Ordering the dissolution or reorganization of any enterprise.

(d) Ordering the suspension or revocation of a license or permit granted to any enterprise by any agency of the state.

(e) Ordering the forfeiture of the charter of a corporation organized under the laws of the state, or the revocation of a certificate authorizing a foreign corporation to conduct business within the state, upon finding that the board of directors or a managerial agent acting on behalf of the corporation, in conducting the affairs of the corporation, has authorized or engaged in conduct in violation of this chapter and that, for the prevention of future criminal activity, the public interest requires the charter of the corporation forfeited and the corporation dissolved or the certificate revoked.

(2) All property, real or personal, including money, used in the course of, intended for use in the course of, derived from, or realized through, conduct in violation of a provision of this chapter is subject to civil forfeiture to the state pursuant to the provisions of Section 97-43-11; provided, however, that a forfeiture of personal property encumbered by a bona fide security interest or real property encumbered by a bona fide mortgage, deed of trust, lien or encumbrance of record shall be subject to the interest of the secured party or subject to the interest of the holder of the mortgage deed of trust, lien of encumbrance of record if such secured party or holder neither had knowledge of or consented to the act or omission.

(3) Property subject to forfeiture may be seized by law enforcement officers upon process issued by any appropriate court having jurisdiction over the property. Seizure without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant or an inspection under a lawful administrative inspection;

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this article;

(4) The Attorney General, any district attorney or any state agency having jurisdiction over conduct in violation of a provision of this chapter may institute civil proceedings under this section. In any action brought under this section, the circuit court shall proceed as soon as practicable to the hearing and determination. Pending final determination, the circuit court may at any time enter such injunctions or restraining orders, or take such actions, including the acceptance of satisfactory performance bonds, as the court may deem proper.

(5) Any aggrieved person may institute a civil proceeding under subsection (1) of this section against any person or enterprise convicted of engaging in activity in violation of this chapter. In such proceeding, relief shall be granted in conformity with the principles that govern the granting of injunc-

tive relief from threatened loss or damage in other civil cases, except that no showing of immediate and irreparable injury, loss or damage to the person shall have to be made.

(6) Any person who is injured by reason of any violation of the provisions of this chapter shall have a cause of action against any person or enterprise convicted of engaging in activity in violation of this chapter for threefold the actual damages sustained and, when appropriate, punitive damages. Such person shall also recover attorneys' fees in the trial and appellate courts and costs of investigation and litigation, reasonably incurred.

(a) The defendant or any injured person may demand a trial by jury in any civil action brought pursuant to this subsection.

(b) Any injured person shall have a right or claim to forfeited property or to the proceeds derived therefrom superior to any right or claim the state has in the same property or proceeds.

(7) The Attorney General may, upon timely application, intervene in any civil action or proceeding brought under subsections (5) or (6) of this section if he certifies that, in his opinion, the action or proceeding is of general public importance. In such action or proceeding, the state shall be entitled to the same relief as if the Attorney General instituted the action or proceeding.

(8) Notwithstanding any other provision of law, a criminal or civil action or proceeding under this chapter may be commenced at any time within five (5) years after the conduct in violation of a provision of this chapter terminates or the cause of action accrues. If a criminal prosecution or civil action or other proceeding is brought, or intervened in, to punish, prevent or restrain any violation of the provisions of this chapter, the running of the period of limitations prescribed by this section with respect to any cause of action arising under subsections (5) or (6) of this section which is based in whole or in part upon any matter complained of in any such prosecution, action or proceeding shall be suspended during the pendency of such prosecution, action or proceeding and for two (2) years following its termination.

(9) The application of one (1) civil remedy under any provision of this chapter shall not preclude the application of any other remedy, civil or criminal, under this chapter or any other provision of law. Civil remedies under this chapter are supplemental.

HISTORY: Laws, 1984, ch. 433, § 5; reenacted and amended, Laws, 1986, ch. 461, § 5, eff from and after passage (approved April 11, 1986).

Editor's Notes — Laws of 1984, ch. 433, § 7, provided that this section would stand repealed from and after June 30, 1986. Laws of 1986, ch. 461, § 7, removed the repeal date specified in ch. 433, Laws of 1984.

Cross References — Punitive damages, generally, see § 11-1-65.

JUDICIAL DECISIONS

1. In general.

Because neither debtor's former president nor anyone on his behalf appeared at trial, the trustee's testimony and evidence introduced at trial was not contradicted and thus, the court found that the president, while employed or associated with debtor, fraudulently diverted money from the estate and conducted the affairs of debtor through a pattern of racketeering activity in violation of the federal and Mississippi RICO Acts, and that the trustee was entitled to treble damages, However, the trustee did not meet her burden of proof with respect to a former employee of debtor. Johnson v. Cmty. Home Fin. Servs. (In re Cmty. Home Fin. Servs.), — B.R. —, 2018 Bankr. LEXIS 557 (Bankr. S.D. Miss. Feb. 27, 2018).

§ 97-43-11. Seizure and forfeiture of property; procedures.

(1) When any property is seized pursuant to Section 97-43-9, proceedings under this section shall be instituted promptly.

(2)(a) A petition for forfeiture shall be filed promptly in the name of the State of Mississippi with the clerk of the circuit court of the county in which the seizure is made. A copy of such petition shall be served upon the following persons by service of process in the same manner as in civil cases:

(i) The owner of the property, if address is known;

(ii) Any secured party who has registered his lien or filed a financing statement as provided by law, if the identity of such secured party can be ascertained by the state by making a good faith effort to ascertain the identity of such secured party as described in paragraphs (b), (c), (d), (e) and (f) of this subsection;

(iii) Any other bona fide lienholder or secured party or other person holding an interest in the property in the nature of a security interest of whom the state has actual knowledge;

(iv) A holder of a mortgage, deed of trust, lien or encumbrance of record, if the property is real estate by making a good faith inquiry as described in paragraph (g) of this subsection; and

(v) Any person in possession of property subject to forfeiture at the time that it was seized.

(b) If the property is a motor vehicle susceptible of titling under the Mississippi Motor Vehicle Title Law and if there is any reasonable cause to believe that the vehicle has been titled, the state shall make inquiry of the State Tax Commission as to what the records of the State Tax Commission show as to who is the record owner of the vehicle and who, if anyone, holds any lien or security interest which affects the vehicle.

(c) If the property is a motor vehicle and is not titled in the State of Mississippi, then the state shall attempt to ascertain the name and address of the person in whose name the vehicle is licensed, and if the vehicle is licensed in a state which has in effect a certificate of title law, the state shall make inquiry of the appropriate agency of that state as to what the records of the agency show as to who is the record owner of the vehicle and who, if anyone, holds any lien, security interest, or other instrument in the nature of a security device which affects the vehicle.

(d) If the property is of a nature that a financing statement is required by the laws of this state to be filed to perfect a security interest affecting the property and if there is any reasonable cause to believe that a financing statement covering the security interest has been filed under the laws of this state, the state shall make inquiry of the appropriate office designated in Section 75-9-501 as to what the records show as to who is the record owner of the property and who, if anyone, has filed a financing statement affecting the property.

(e) If the property is an aircraft or part thereof and if there is any reasonable cause to believe that an instrument in the nature of a security device affects the property, then the state shall make inquiry of the administrator of the Federal Aviation Administration as to what the records of the administrator show as to who is the record owner of the property and who, if anyone, holds an instrument in the nature of a security device which affects the property.

(f) In the case of all other personal property subject to forfeiture, if there is any reasonable cause to believe that an instrument in the nature of a security device affects the property, then the state shall make a good faith inquiry to identify the holder of any such instrument.

(g) If the property is real estate, the state shall make inquiry at the appropriate places to determine who is the owner of record and who, if anyone is a holder of a bona fide mortgage, deed of trust, lien or encumbrance.

(h) In the event the answer to an inquiry states that the record owner of the property is any person other than the person who was in possession of it when it was seized, or states that any person holds any lien, encumbrance, security interest, other interest in the nature of a security interest, mortgage or deed of trust which affects the property, the state shall cause any record owner and also any lienholder, secured party, other person who holds an interest in the property in the nature of a security interest, or holder of an encumbrance, mortgage or deed of trust which affects the property to be named in the petition of forfeiture and to be served with process in the same manner as in civil cases.

(i) If the owner of the property cannot be found and served with a copy of the petition of forfeiture, or if no person was in possession of the property subject to forfeiture at the time that it was seized and the owner of the property is unknown, the state shall file with the clerk of the court in which the proceeding is pending an affidavit to such effect, whereupon the clerk of the court shall publish notice of the hearing addressed to "the Unknown Owner of ________," filling in the blank space with a reasonably detailed description of the property subject to forfeiture. Service by publication shall contain the other requisites prescribed in Section 11-33-41, and shall be served as provided in Section 11-33-37 for publication of notice for attachments at law.

(j) No proceedings instituted pursuant to the provisions of this article shall proceed to hearing unless the judge conducting the hearing is satisfied that this section has been complied with. Any answer received from an inquiry required by paragraphs (b) through (g) of this subsection shall be introduced into evidence at the hearing.

(3)(a) An owner of property that has been seized shall file a verified answer within twenty (20) days after the completion of service of process. If no answer is filed, the court shall hear evidence that the property is subject to forfeiture and forfeit the property to the state. If an answer is filed, a time for hearing on forfeiture shall be set within thirty (30) days of filing the answer or at the succeeding term of court if court would not be in progress within thirty (30) days after filing the answer. Provided, however, that upon request by the state or the owner of the property, the court may postpone said forfeiture hearing to a date past the time any criminal action is pending against said owner.

(b) If the owner of the property has filed a verified answer denying that the property is subject to forfeiture, then the burden is on the state to prove that the property is subject to forfeiture. The burden of proof placed upon the state shall be clear and convincing proof. However, if no answer has been filed by the owner of the property, the petition for forfeiture may be introduced into evidence and is prima facie evidence that the property is subject to forfeiture.

(c) At the hearing any claimant of any right, title, or interest in the property may prove his lien, encumbrance, security interest, other interest in the nature of a security interest, mortgage or deed of trust to be bona fide and created without knowledge or consent that the property was to be used so as to cause the property to be subject to forfeiture.

(d) If it is found that the property is subject to forfeiture, then the judge shall forfeit the property to the state. However, if proof at the hearing discloses that the interest of any bona fide lienholder, secured party, other person holding an interest in the property in the nature of a security interest or any holder of a bona fide encumbrance, mortgage or deed of trust is greater than or equal to the present value of the property, the court shall order the property released to him. If such interest is less than the present value of the property and if the proof shows that the property is subject to forfeiture, the court shall order the property forfeited to the state.

(4)(a) All personal property, including money, which is forfeited to the state and is not capable of being sold at public auction shall be liquidated and the proceeds, after deduction of all storage and court costs, shall be forwarded to the State Treasurer and deposited in the General Fund of the state.

(b) All real estate which is forfeited to the state shall be sold to the highest bidder at a public auction to be conducted by the state at such place, on such notice and in accordance with the same procedure, as far as practicable, as is required in the case of sales of land under execution of law. The proceeds of such sale shall first be applied to the cost and expense in administering and conducting such sale, then to the satisfaction of all mortgages, deeds of trusts, liens and encumbrances of record on such property. All proceeds in excess of the amount necessary for the cost of the sale of such land and the satisfaction of any liens thereon shall be deposited in the General Fund of the State Treasury.

(c) All other property that has been seized by the state and that has been forfeited shall, except as otherwise provided, be sold at a public auction for cash by the state to the highest and best bidder after advertising the sale for at least once each week for three (3) consecutive weeks, the last notice to appear not more than ten (10) days nor less than five (5) days prior to such sale, in a newspaper having a general circulation throughout the State of Mississippi. Such notices shall contain a description of the property to be sold and a statement of the time and place of sale. It shall not be necessary to the validity of such sale either to have the property present at the place of sale or to have the name of the owner thereof stated in such notice. The proceeds of the sale shall be delivered to the circuit clerk and shall be disposed of as follows:

(i) To any bona fide lienholder, secured party, or other party holding an interest in the property in the nature of a security interest, to the extent of his interest; and

(ii) The balance, if any, after deduction of all storage and court costs, shall be forwarded to the State Treasurer and deposited with and used as general funds of the state.

(d) The State Tax Commission shall issue a certificate of title to any person who purchases property under the provisions of this section when a certificate of title is required under the laws of this state.

HISTORY: Laws, 1984, ch. 433, § 6; reenacted, Laws, 1986, ch. 461, § 6; Laws, 2001, ch. 495, § 28, eff from and after Jan. 1, 2002.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected errors in internal references in subsection (2)(a)(iv), by substituting "paragraph (g) of this subsection" for "paragraph (g) of this section," and in (2)(j), by substituting "paragraphs (b) through (g) of this subsection" for "paragraphs (b) through (g) of this section." The Joint Committee ratified the correction at its October 19, 2020, meeting.

Editor's Notes — Laws of 1984, ch. 433, § 7, provided that this section would stand repealed from and after June 30, 1986. Laws of 1986, ch. 461, § 7, removed the repeal date specified in ch. 433, Laws of 1984.

Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

RESEARCH REFERENCES

ALR.

Propriety of civil or criminal forfeiture of computer hardware or software. 39 A.L.R.5th 87.

CHAPTER 44.

MISSISSIPPI STREETGANG ACT

Sec.
97-44-1. Short title.
97-44-3. Definitions.
97-44-5. Cause of action.
97-44-7. Filing of complaint.
97-44-9. Venue.
97-44-11. Service of process.
97-44-13. Punitive damages.
97-44-15. Injunction, abatement, damages, or other remedies for unlawful use of private building by criminal street gang.
97-44-17. Forfeiture of firearms, ammunition, and dangerous weapons used by criminal street gangs; disposition of property seized; procedure.
97-44-19. Penalties for criminal street gang activity.

§ 97-44-1. Short title.

This chapter shall be known as the "Mississippi Streetgang Act."

HISTORY: Laws, 1996, ch. 513, § 1, eff from and after July 1, 1996.

§ 97-44-3. Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings ascribed herein, unless the context clearly requires otherwise:

(a) "Streetgang" or "gang" or "organized gang" or "criminal streetgang" means any combination, confederation, alliance, network, conspiracy, understanding, or other similar conjoining, in law or in fact, of three (3) or more persons with an established hierarchy that, through its membership or through the agency of any member, engages in felonious criminal activity.

For purposes of this chapter, it shall not be necessary to show that a particular conspiracy, combination or conjoining of persons possesses, acknowledges or is known by any common name, insignia, flag, means of recognition, secret signal or code, creed, belief, structure, leadership or command structure, method of operation or criminal enterprise, concentration or specialty, membership, age or other qualifications, initiation rites, geographical or territorial situs or boundary or location, or other unifying mark, manner, protocol or method of expressing or indicating membership when the conspiracy's existence, in law or in fact, can be demonstrated by a preponderance of the competent evidence. However, any evidence reasonably tending to show or demonstrate, in law or in fact, the existence of or membership in any conspiracy, confederation or other association described herein, or probative of the existence of or membership in any such association, shall be admissible in any action or proceeding brought under this chapter.

(b) "Public authority" means the state and political subdivisions as defined in Section 11-46-1, Mississippi Code of 1972.

(c) "Streetgang member" or "gang member" means any person who actually and in fact belongs to a gang, and any person who knowingly acts in the capacity of an agent for or accessory to, or is legally accountable for, or voluntarily associates himself with a gang-related criminal activity, whether in a preparatory, executory or cover-up phase of any activity, or who knowingly performs, aids or abets any such activity.

(d) "Streetgang related" or "gang-related" means any criminal activity, enterprise, pursuit or undertaking directed by, ordered by, authorized by, consented to, agreed to, requested by, acquiesced in, or ratified by any gang leader, officer or governing or policymaking person or authority, or by any agent, representative or deputy of any such officer, person or authority:

(i) With intent to increase the gang's size, membership, prestige, dominance or control in any geographical area; or

(ii) With intent to exact revenge or retribution for the gang or any member of the gang; or

(iii) With intent to provide the gang with any advantage in, or any control or dominance over, any criminal market sector, including but not limited to the unlawful manufacture, delivery, possession or sale of controlled substances; arson; traffic in stolen property or stolen credit cards; traffic in prostitution, obscenity or pornography; or that involves robbery, armed robbery, burglary or larceny; or

(iv) With intent to obstruct justice, or intimidate or eliminate any witness against the gang or any member of the gang; or

(v) With intent to otherwise, directly or indirectly, cause any benefit, aggrandizement, gain, profit or other advantage whatsoever to or for the gang, its reputation, influence or membership.

HISTORY: Laws, 1996, ch. 513, § 2, eff from and after July 1, 1996.

JUDICIAL DECISIONS

ANALYSIS

1. Jury instructions.
2. Burden of proof.

1. Jury instructions.

Instruction permitting the jury to find an element of participating in, conducting, or conspiring in illegal gang activity by a preponderance of the evidence constituted plain error because the existence of a gang was a fact constituting an "element" or "ingredient" of participating in or conducting or conspiring in illegal gang activity; therefore, the gang's existence was required to be proved beyond a reasonable doubt. Croft v. State, 283 So. 3d 1, 2019 Miss. LEXIS 201 (Miss. 2019).

Jury instruction that tracks the language of subsection (a) would be valid in civil actions, but such an instruction fails to pass muster in criminal proceedings; an instruction permitting a jury in a criminal case to find an element of a crime by a preponderance of the evidence constitutes plain error. Croft v. State, 283 So. 3d 1, 2019 Miss. LEXIS 201 (Miss. 2019).

2. Burden of proof.

Existence of a gang is clearly a fact constituting an "element" or "ingredient" of "participating in or conducting or conspiring" in illegal gang activity; therefore, the gang's existence is required to be proved to the jury beyond a reasonable doubt. Croft v. State, 283 So. 3d 1, 2019 Miss. LEXIS 201 (Miss. 2019).

§ 97-44-5. Cause of action.

(1) A civil cause of action is hereby created in favor of any public authority expending money, allocating or reallocating police, firefighting, emergency or other personnel or resources, or otherwise incurring any loss, deprivation or injury, or sustaining any damage, impairment or harm whatsoever, proximately caused by any criminal activity.

(2) The cause of action created by this chapter shall lie against:

(a) Any streetgang in whose name, for whose benefit, on whose behalf or under whose direction the act was committed; and

(b) Any gang officer or director who causes, orders, suggests, authorizes, consents to, agrees to, requests, acquiesces in or ratifies any such act; and

(c) Any gang member who, in the furtherance of or in connection with, any gang-related activity, commits any such act; and

(d) Any gang officer, director, leader or member.

(3) The cause of action authorized by this chapter shall be brought by the Attorney General, the district attorney or attorneys, or the county attorney, or by his or their respective designees. This cause of action shall be in addition to any other civil or criminal proceeding authorized by the laws of this state or by federal law, and shall not be construed as requiring the prosecutor to elect a civil, rather than criminal, remedy, or as replacing any other cause of action. Liability of the gang, its officers, directors, leaders and members shall be joint and several subject only to the apportionment and allocation of punitive damage authorized under Section 97-44-13.

HISTORY: Laws, 1996, ch. 513, § 3, eff from and after July 1, 1996.

RESEARCH REFERENCES

ALR.

Apportionment of liability between landowners and assailants for injuries to crime victims. 54 A.L.R.5th 379.

§ 97-44-7. Filing of complaint.

(1) An action may be commenced under this chapter by the filing of a complaint as in civil cases.

(2) A complaint filed under this chapter, and all other ancillary or collateral matters arising therefrom, including matter relating to discovery, motions, trial and the perfection or execution of judgments shall be subject to the Rules of Civil Procedure, except as may be otherwise provided in this chapter, or except as the court may otherwise order upon motion of the prosecutor in matters relating to immunity or the physical safety of witnesses.

(3) The complaint shall name the Attorney General or his designee, if a complainant, each complaining district attorney or his designee, each com-

plaining county attorney, and the public authority represented by him or by them.

(4) The complaint shall also name as defendants the gang, all known gang officers, and any gang members specifically identified or alleged in the complaint as having participated in a gang-related criminal activity. The complaint may also name, as a class of defendants, all unknown gang members.

(5) When, at any point prior to trial, other specific gang officers or members become known, the complaint may be amended to include any such person as a named defendant.

(6) Any individual who suffers any injury under the provisions of this chapter shall have the right to file a civil action in his or her name.

HISTORY: Laws, 1996, ch. 513, § 4, eff from and after July 1, 1996.

§ 97-44-9. Venue.

(1) In an action brought under this chapter, venue shall lie in any county where an act charged in the complaint as part of a gang-related criminal activity was committed.

(2) It shall not be necessary for all offenses necessary to establishing a criminal activity to have occurred in any one county where the district attorneys or county attorneys of several counties, or their designees, each complaining of any offense, elected to join in a complaint. In such instance, it shall be sufficient that the complaint, taken as a whole, alleges a gang-related criminal activity, and each count of any such joint complaint shall be considered as cumulative to other counts for purposes of alleging or demonstrating such an activity.

(3) Where an activity is alleged to have been committed or to have occurred in more than one county, the district attorney or county attorney of each such county, or their designees, may join their several causes of action in a single complaint, which may be filed in any such county agreed to by or among them, but no such joinder shall be had without the consent of the district attorney or county attorney having jurisdiction over each offense alleged as part of the activity.

HISTORY: Laws, 1996, ch. 513, § 5, eff from and after July 1, 1996.

§ 97-44-11. Service of process.

(1) All streetgangs and streetgang members engaged in a gang-related criminal activity within this state impliedly consent to service of process upon them as set forth in this section, or as may be otherwise authorized by the Rules of Civil Procedure.

(2) Service of process upon a streetgang may be had by leaving a copy of the complaint and summons directed to any officer of such gang, commanding the gang to appear and answer the complaint or otherwise plead at a time and place certain:

(a) With any gang officer; or

(b) With any individual member of the gang simultaneously named therein; or

(c) In the manner provided for service by publication in a civil action; or

(d) With any parent, legal guardian or legal custodian of any persons charged with a gang-related offense when any person sued civilly under this chapter is under seventeen (17) years of age and is also charged criminally or as a delinquent minor; or

(e) With the director of any agency or department of this state who is the legal guardian, guardianship administrator or custodian of any person sued under this chapter; or

(f) With the probation or parole officer of any person sued under this chapter; or

(g) With such other person or agent as the court may, upon petition of the district attorney or his designee or the county attorney, authorize as appropriate and reasonable under all of the circumstances.

(3) If after being summoned a streetgang does not appear, the court shall enter an answer for the streetgang neither affirming nor denying the allegations of the complaint but demanding strict proof thereof, and proceed to trial and judgment without further process.

(4) When any person is named as a defendant streetgang member in any complaint, or subsequently becomes known and is added or joined as a named defendant, service of process may be had as authorized or provided for in the Rules of Civil Procedure for service of process in a civil case.

HISTORY: Laws, 1996, ch. 513, § 6, eff from and after July 1, 1996.

§ 97-44-13. Punitive damages.

(1) In any action brought under this chapter, and upon the verified application of the district attorney or his designee or the county attorney, the circuit court may at any time enter such restraining orders, injunctions or other prohibitions, or order such other relief as it deems proper, including but not limited to ordering any person to divest himself of any involvement or interest, direct or indirect, in any illegal streetgang activity and imposing other reasonable restrictions on the future illegal activities of any defendant.

(2) A final judgment in favor of a public authority under this chapter shall entitle it to recover compensatory damages for all damages, losses, impairments or other harm proximately caused, together with the costs of the suit and reasonable attorney's fees. Punitive damages may be assessed against any streetgang, against any streetgang officer or member found guilty of actual participation in, or to be legally accountable for, a criminal activity under this chapter. One hundred percent (100%) of punitive damages awarded will be expended by the public authority to implement preventative programs for juveniles or to fund existing programs.

HISTORY: Laws, 1996, ch. 513, § 7, eff from and after July 1, 1996.

§ 97-44-15. Injunction, abatement, damages, or other remedies for unlawful use of private building by criminal street gang.

(1) Every private building or place used by members of a criminal street gang for the commission of illegal activity is a nuisance and may be the subject of an injunction or cause of action for damages or for abatement of the nuisance as provided for in this chapter.

(2) Any person may file a petition for injunctive relief with the appropriate court seeking eviction from or closure of any premises used for commission of illegal activity by a criminal street gang. Upon clear and convincing proof by the plaintiff that the premises are being used by members of a criminal street gang for the commission of illegal activity, the court may order the owner of record or the lessee of the premises to remove or evict the persons from the premises and order the premises sealed, prohibit further use of the premises, or enter such order as may be necessary to prohibit the premises from being used for the commission of illegal activity by a gang and to abate the nuisance.

(3) Any action for injunction, damages, abatement, or other relief filed pursuant to this section shall proceed according to the provisions of the Rules of Civil Procedure.

(4) The court shall not issue an injunction or assess a civil penalty against any owner of record or the lessee of the private building or place, unless there is a showing by clear and convincing proof that the person knew or should have known or had been notified of the use of the premises by a gang for illegal activity. Any injunctive relief other than that specifically authorized in subsection (6) of this section shall be limited to that which is necessary to protect the health and safety of the residents or the public or that which is necessary to prevent further illegal activity.

(5) A petition for injunction shall not be filed until thirty (30) days after notice of the unlawful use or criminal conduct has been provided to the owner of record or the lessee, by mail, return receipt requested, postage prepaid, to the owner's last known address, or by personal service. If the premises are abandoned or closed, or if the whereabouts of the owner of record or lessee is unknown, all notices, process, pleadings, and orders required to be delivered or served under this section may be attached to a door of the premises and mailed, return receipt requested, to the last address which is reflected on the ad valorem tax receipt on file in the office of the tax collector of the county where the property is located, and this shall have the same effect as personal service on the owner of record or lessee. No injunctive relief authorized by subsection (6) of this section shall be issued in the form of a temporary restraining order.

(6) If the court has previously issued injunctive relief ordering the owner of record or the lessee of the premises to close the premises or otherwise to keep the premises from being used for the commission by a gang of illegal activity, the court, upon proof of failure to comply with the terms of the injunction and that the premises continue to be used by a gang for the commission of illegal activity, may do one or more of the following:

(a) Order the premises demolished and cleared at the cost of the owner.

(b) Order the premises sold at public auction and the proceeds from the sale, minus the costs of the sale and the expenses of bringing the action, delivered to the owner.

(c) Order the defendant to pay damages to persons or local governing authorities who have been damaged or injured or have incurred expense as a result of the defendant's failure to take reasonable steps or precautions to comply with the terms of any injunction issued pursuant to the provisions of this chapter.

(d) Assess a civil penalty not to exceed Five Thousand Dollars ($5,000.00) against the defendant based upon the severity of the nuisance and its duration. In establishing the amount of any civil penalty, the court shall consider all of the following factors:

(i) The actions taken by the defendant to mitigate or correct the problem at the private building or place or the reasons why no such action was taken.

(ii) Any failure of the plaintiff to provide notice as required by subsection (5) of this section.

(iii) Any other factor deemed by the court to be relevant.

(7) No nonprofit, fraternal or charitable organization which is conducting its affairs with ordinary care or skill nor any governmental entity shall be enjoined pursuant to the provisions of this chapter.

(8) Nothing in this chapter shall preclude any aggrieved person from seeking any other remedy provided by law.

HISTORY: Laws, 2001, ch. 525, § 1, eff from and after July 1, 2001.

§ 97-44-17. Forfeiture of firearms, ammunition, and dangerous weapons used by criminal street gangs; disposition of property seized; procedure.

(1) Any firearm, ammunition to be used in a firearm, or dangerous weapon in the possession of a member of a criminal street gang may be seized by any law enforcement agency or peace officer when the law enforcement agency or peace officer has probable cause to believe that the firearm, ammunition to be used in a firearm, or dangerous weapon is or has been used by a gang in the commission of illegal activity.

(2) The district attorney or an attorney for the seizing agency shall initiate, in a civil action, forfeiture proceedings by petition in the circuit courts as to any property seized pursuant to the provisions of this section within thirty (30) days of seizure. The district attorney shall provide notice of the filing of the petition to those members of the gang who become known to law enforcement officials as a result of the seizure and any related arrests, and to any person determined by law enforcement officials to be the owner of any of the property involved. After initial notice of the filing of the petition, the court shall assure that all persons so notified continue to receive notice of all subsequent proceedings related to the property.

(3) Any person who claims an interest in any seized property shall, in order to assert a claim that the property should not be forfeited, file a notice with the court, without necessity of paying costs, of the intent to establish either of the following:

(a) That the persons asserting the claim did not know of, could not have known of, or had no reason to believe in its use by a gang in the commission of illegal activity; or

(b) That the law enforcement officer lacked the requisite reasonable belief that the property was or had been used by a gang in the commission of illegal activity.

(4) An acquittal or dismissal in a criminal proceeding shall not preclude civil proceedings under this section; however, for good cause shown, on motion by the district attorney, the court may stay civil forfeiture proceedings during the criminal trial for related criminal indictment or information alleging a violation of this section. Such a stay shall not be available pending an appeal.

(5) Except as otherwise provided by this section, all proceedings hereunder shall be governed by the provisions of the Mississippi Rules of Civil Procedure.

(6) The issue shall be determined by the court alone, and the hearing on the claim shall be held within sixty (60) days after service of the petition unless continued for good cause. The district attorney shall have the burden of showing by clear and convincing proof that forfeiture of the property is appropriate.

(7) Any person who asserts a successful claim in accordance with subsection (3) of this section shall be awarded the seized property by the court, together with costs of filing such action. All property as to which no claim is filed, or as to which no successful claim is made, may be destroyed, sold at a public sale, retained for use by the seizing agency or transferred without charge to any law enforcement agency of the state for use by it. Property that is sold shall be sold by the circuit court at a public auction for cash to the highest and best bidder after advertising the sale for at least once each week for three (3) consecutive weeks, the last notice to appear not more than ten (10) days nor less than five (5) days prior to such sale in a newspaper having a general circulation in the county. Such notice shall contain a description of the property to be sold and a statement of the time and place of sale. It shall not be necessary to the validity of such sale either to have the property present at the place of sale or to have the name of the owner thereof stated in such notice. The proceeds of the sale, less any expenses of concluding the sale, shall be deposited in the seizing agency's general fund to be used only for approved law enforcement activity affecting the agency's efforts to combat gang activities.

(8) Any action under the provisions of this section may be consolidated with any other action or proceedings pursuant to this section relating to the same property on motion of the district attorney.

HISTORY: Laws, 2001, ch. 525, § 2, eff from and after July 1, 2001.

§ 97-44-19. Penalties for criminal street gang activity.

(1) Any person who intentionally directs, participates, conducts, furthers, or assists in the commission of illegal gang activity shall be punished by imprisonment for not less than one (1) year nor more than one-half (½) of the maximum term of imprisonment provided for an underlying offense and may be fined an amount not to exceed Ten Thousand Dollars ($10,000.00). Any sentence of imprisonment imposed pursuant to this section shall be in addition and consecutive to any sentence imposed for the underlying offense.

(2) Any person who is convicted of a felony or an attempted felony which is committed for the benefit of, at the direction of, or in association with any criminal street gang, with the intent to promote, further, or assist in the affairs of a criminal gang, shall, upon conviction of that felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be imprisoned for not less than one (1) year nor more than one-half (½) of the maximum term of imprisonment provided for that offense.

(3) Any person who is convicted of an offense other than a felony which is committed for the benefit of, at the direction of, or in association with, any criminal street gang, with the specific intent to promote, further or assist in any criminal conduct or enterprise by gang members, shall, in addition and consecutive to the penalty provided for that offense, be imprisoned for an additional period of not more than one (1) year.

(4) Any person who knowingly and willfully sells or buys goods or performs services for a criminal street gang in furtherance of illegal activity shall be punished by imprisonment for not less than one (1) year nor more than one-half (½) of the maximum term of imprisonment provided for the underlying offense and may be fined an amount not to exceed Ten Thousand Dollars ($10,000.00).

(5) The court may elect to suspend all or a part of any additional mandatory punishment or enhanced punishment provided for in this chapter to impose alternative punishment in the form of properly supervised community service or placement in an appropriate adolescent offender program, if available, only in an unusual case where the interest of justice would best be served, and if the court specifies on the record and enters into the minutes the circumstances and reasons that the interests of justice would best be served by that suspension of enhanced punishment.

HISTORY: Laws, 2001, ch. 525, § 3, eff from and after July 1, 2001.

JUDICIAL DECISIONS

ANALYSIS

1. Jury instructions.
2. Burden of proof.

1. Jury instructions.

Instruction permitting the jury to find an element of participating in, conducting, or conspiring in illegal gang activity by a preponderance of the evidence constituted plain error because the existence of a gang was a fact constituting an "element" or "ingredient" of participating in or conducting or conspiring in illegal gang activity; therefore, the gang's existence was required to be proved beyond a reasonable doubt. Croft v. State, 283 So. 3d 1, 2019 Miss. LEXIS 201 (Miss. 2019).

2. Burden of proof.

Existence of a gang is clearly a fact constituting an "element" or "ingredient" of "participating in or conducting or conspiring" in illegal gang activity; therefore, the gang's existence is required to be proved to the jury beyond a reasonable doubt. Croft v. State, 283 So. 3d 1, 2019 Miss. LEXIS 201 (Miss. 2019).

CHAPTER 45.

COMPUTER CRIMES AND IDENTITY THEFT

Sec.

97-45-1. Definitions.
97-45-2. Identity theft; definitions; investigative authority of Attorney General; form of subpoena; enforcement and penal provisions; refusal to produce documents as requested by subpoena; confidentiality of information.
97-45-3. Computer fraud; penalties.
97-45-5. Offense against computer users; penalties.
97-45-7. Offense against computer equipment; penalties.
97-45-9. Offense against intellectual property; penalties.
97-45-11. Venue.
97-45-13. Effect on other offenses.
97-45-15. "Cyberstalking"; penalties.
97-45-17. Posting of messages through electronic media for purpose of causing injury to any person; penalties.
97-45-19. Identity theft.
97-45-21. Jurisdiction for bringing criminal action.
97-45-23. Investigations and prosecutions.
97-45-25. Additional penalties for violations under this chapter; funding of expenses of Attorney General's Cyber Crime Central or special fund program; deposit of user charges and fees authorized under this section into State General Fund.
97-45-27. Identity theft; victim authorized to expunge record of false charges accrued on account of activities of the perpetrator.
97-45-29. Identity theft; Attorney General authorized to issue "Identity Theft Passports" verifying that expunction order has been entered or police report has been filed; access to identity theft information.
97-45-31. Using scanning device or reencoder to capture encoded information from magnetic strip on credit, debit or other payment card; definitions; penalty.
97-45-33. Online impersonation; penalties.

Editor's Notes — Laws of 2004, ch. 526, § 9, provides:

"SECTION 9. The publisher is directed to amend the chapter heading of Title 97, Chapter 45, Mississippi Code of 1972, so as to refer to 'Computer Crimes and Identity Theft.' " Prior to the amendment, the chapter heading read: "Computer Crimes."

§ 97-45-1. Definitions.

For the purposes of this chapter, the following words shall have the meanings ascribed herein unless the context clearly requires otherwise:

(a) "Access" means to program, to execute programs on, to communicate with, store data in, retrieve data from or otherwise make use of any resources, including data or programs, of a computer, computer system or computer network.

(b) "Computer" includes an electronic, magnetic, optical or other high-speed data processing device or system performing logical arithmetic and storage functions and includes any property, data storage facility or communications facility directly related to or operating in conjunction with such device or system. "Computer" shall not include an automated typewriter or typesetter, a machine designed solely for word processing which contains no database intelligence or a portable hand-held calculator nor shall "computer" include any other device which contains components similar to those in computers but in which the components have the sole function of controlling the device for the single purpose for which the device is intended unless the thus controlled device is a processor of data or is a storage of intelligence in which case it too is included.

(c) "Computer network" means a set of related, remotely connected devices and communication facilities including at least one (1) computer system with the capability to transmit data through communication facilities.

(d) "Computer program" means an ordered set of data representing coded instructions or statements that when executed by a computer cause the computer to process data.

(e) "Computer software" means a set of computer programs, procedures and associated documentation concerned with operation of a computer system.

(f) "Computer system" means a set of functionally related, connected or unconnected, computer equipment, devices or computer software.

(g) "Computer services" means providing access to or service or data from a computer, a computer system or a computer network and includes the actual data processing.

(h) "Credible threat" means a threat made with the intent and the apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or her safety.

(i) "Loss or damage" includes any reasonable cost to any victim, including the cost of responding to an offense, conducting a damage assessment, and restoring the data, program, system, or information to its condition prior to the offense, and any revenue lost, cost incurred or other consequential damages incurred because of interruption of service.

(j) "Device" includes, but is not limited to, an electronic, magnetic, electrochemical, biochemical, hydraulic, optical, or organic object that performs input, output, or storage functions by the manipulation of electronic, magnetic or other impulses.

(k) "Electronic communication" means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature, transmitted in whole or in part by a wire, radio, computer, electromagnetic, photoelectric or photo-optical system.

(*l*) "Electronic mail" means the transmission of information or communication by the use of the Internet, a computer, a facsimile machine, a pager, a cellular telephone, a video recorder or other electronic means sent to a person identified by a unique address or address number and received by that person.

(m) "Emotional distress" means significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling.

(n) "Financial instrument" means any check, draft, money order, certificate of deposit, letter of credit, bill of exchange, credit card as defined in Section 97-19-9(b), Mississippi Code of 1972, or marketable security.

(o) "Financial transaction device" means any of the following:

(i) An electronic funds transfer card.

(ii) A credit card.

(iii) A debit card.

(iv) A point-of-sale card.

(v) Any instrument, device, card, plate, code, account number, personal identification number, or a record or copy of a code, account number, or personal identification number or other means of access to a credit account or deposit account, or a driver's license or state identification card used to access a proprietary account, other than access originated solely by a paper instrument, that can be used alone or in conjunction with another access device, for any of the following purposes.

1. Obtaining money, cash refund or credit account credit, goods, services or any other thing of value.

2. Certifying or guaranteeing to a person or business the availability to the device holder of funds on deposit to honor a draft or check payable to the order of that person or business.

3. Providing the device holder access to a deposit account for the purpose of making deposits, withdrawing funds, transferring funds between deposit accounts, obtaining information pertaining to a deposit account or making an electronic funds transfer.

(p) "Intellectual property" includes data, computer programs, computer software, trade secrets, copyrighted materials and confidential or proprietary information in any form or medium when such is stored in, produced by or intended for use or storage with or in a computer, a computer system or a computer network.

(q) "Internet" means that term as defined in Section 230 of Title II of the Communications Act of 1934, Chapter 652, 110 Stat. 137, 47 USCS 230.

(r) "Medical records" includes, but is not limited to, medical and mental health histories, reports, summaries, diagnoses and prognoses, treatment and medication information, notes, entries, and x-rays and other imaging records.

(s) "Personal identity information" means any of the following information of another person:

(i) A social security number.

(ii) A driver's license number or state personal identification card number.

(iii) Employment information.

(iv) Information regarding any financial account held by another person including, but not limited to, any of the following:

1. A savings or checking account number.

2. A financial transaction device account number.

3. A stock or other security certificate or account number.

4. A personal information number for an account described in items 1 through 4.

(t) "Post a message" means transferring, sending, posting, publishing, disseminating, or otherwise communicating or attempting to transfer, send, post, publish, disseminate or otherwise communicate information, whether truthful or untruthful, about the victim.

(u) "Property" means property as defined in Section 1-3-45, Mississippi Code of 1972, and shall specifically include, but not be limited to, financial instruments, electronically stored or produced data and computer programs, whether in machine readable or human readable form.

(v) "Proper means" includes:

(i) Discovery by independent invention;

(ii) Discovery by "reverse engineering"; that is, by starting with the known product and working backward to find the method by which it was developed. The acquisition of the known product must be by lawful means;

(iii) Discovery under license or authority of the owner;

(iv) Observation of the property in public use or on public display; or

(v) Discovery in published literature.

(w) "Unconsented contact" means any contact with another individual that is initiated or continued without that individual's consent or in disregard of that individual's expressed desire that the contact be avoided or discontinued. Unconsented contact includes any of the following:

(i) Following or appearing within sight of the victim.

(ii) Approaching or confronting the victim in a public place or on private property.

(iii) Appearing at the victim's workplace or residence.

(iv) Entering onto or remaining on property owned, leased or occupied by the victim.

(v) Contacting the victim by telephone.

(vi) Sending mail or electronic communications to the victim through the use of any medium, including the Internet or a computer, computer program, computer system or computer network.

(vii) Placing an object on, or delivering or having delivered an object to, property owned, leased or occupied by the victim.

(x) "Use" means to make use of, to convert to one's service, to avail oneself of or to employ. In the context of this chapter, "use" includes to instruct, communicate with, store data in or retrieve data from, or otherwise utilize the logical arithmetic or memory functions of a computer.

(y) "Victim" means the individual who is the target of the conduct elicited by the posted message or a member of that individual's immediate family.

HISTORY: Laws, 1985, ch. 319, § 1; Laws, 2003, ch. 562, § 4, eff from and after July 1, 2003.

RESEARCH REFERENCES

ALR.

Criminal liability for misappropriation of trade secret. 84 A.L.R.3d 967.

Disclosure or use of computer application software as misappropriation of trade secret. 30 A.L.R.4th 1250.

Criminal liability for theft of, interference with, or unauthorized use of, computer programs, files, or systems. 51 A.L.R.4th 971.

Propriety of civil or criminal forfeiture of computer hardware or software. 39 A.L.R.5th 87.

Computer fraud. 70 A.L.R.5th 647.

Am. Jur.

50 Am. Jur. 2d, Larceny § 59.

14 Am. Jur. Proof of Facts 2d 173, Admissibility of Computerized Business Records.

41 Am. Jur. Proof of Facts 2d 517, Abandonment of Trade Secret.

33 Am. Jur. Trials 1, Defense of Computer Crime.

CJS.

52B C.J.S. Larceny § 28.

§ 97-45-2. Identity theft; definitions; investigative authority of Attorney General; form of subpoena; enforcement and penal provisions; refusal to produce documents as requested by subpoena; confidentiality of information.

(1) For the purposes of this chapter, "identity theft" includes crimes chargeable under the following provisions of law:

(a) Section 97-9-79, which relates to false information.

(b) Section 97-19-83, which relates to fraud by mail or other means of communication.

(c) Section 97-19-85, which relates to the fraudulent use of identity social security number, credit card or debit card number or other identifying information.

(d) Section 97-45-19, which relates to obtaining personal identity information of another person without authorization.

(2)(a) In conducting identity theft investigations, the Attorney General shall have the authority to issue and serve subpoenas to any person in control of any designated documents for the production of such documents, including, but not limited to, writings, drawings, graphs, charts, photographs, phono-records and other data compilations from which information can be obtained, or translated through detection devices into reasonably usable form. Such subpoenas shall require the named person, his agent or attorney, to appear and deliver the designated documents to a location in the county of his residence unless the court for good cause shown directs that the subpoena be issued for the person to deliver such documents to a location outside of the county of his residence. Mere convenience of the Attorney General shall not be considered good cause. The Attorney General or his designee shall have the authority to inspect and copy such documents. Such subpoenas shall be issued only upon the ex parte and in camera application of the Attorney General to the circuit or chancery court of the county of residence of the person in control of the documents or the circuit or chancery court of the county where the person in control of the documents may be found, and only upon a showing that the documents sought are relevant to a criminal investigation under this chapter or may lead to the discovery of such relevant evidence. Thereafter said court shall have jurisdiction to enforce or quash such subpoenas and to enter appropriate orders thereon, and nothing contained in this section shall affect the right of a person to assert a claim that the information sought is privileged by law.

(b) A subpoena issued pursuant to this subsection shall be in substantially the following form:

SUBPOENA TO PRODUCE DOCUMENTS PURSUANT
TO AN INVESTIGATION BY THE
ATTORNEY GENERAL

TO:

YOU ARE HEREBY COMMANDED to appear before the Attorney General of the State of Mississippi or his designated staff attorney at the place, date and time specified below in an investigation being conducted by the Attorney General pursuant to Section ________, Mississippi Code of 1972:

Place ____________ Date and Time ____________

YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s) ____________________.

You are advised that the ________ Court of the ________ Judicial District of ____________ County, Mississippi, has approved the ex parte and in camera application of the Attorney General to issue this subpoena, and jurisdiction to enforce and/or quash the subpoena and to enter appropriate orders thereon is statutorily vested in the said court; enforcement and penal provisions applicable to an Attorney General's investigation include those set forth in Section ________, Mississippi Code of 1972; and disclosure of testimony and/or records coming into possession of the Attorney General pursuant to this subpoena shall be limited by and subject to the provisions of said section (for informational purposes, these cited statutes are reproduced on the reverse side of this subpoena).

You may wish to consult an attorney in regard to this subpoena. You have certain state and federal constitutional rights, including your protection against self-incrimination and unreasonable search and seizure which this subpoena may affect.

ISSUED BY AND UNDER SEAL OF THE ATTORNEY GENERAL OF THE STATE OF MISSISSIPPI, this the ________ day of ________________, 20________.

(SEAL)____________________

(c) Following service of any subpoena, pursuant to the provisions of this subsection, a record of the return shall be made and kept by the Attorney General and subject only to such disclosure as may be authorized pursuant to the provisions of this section.

(3) Enforcement and penal provisions applicable to an investigation under this section shall include the following:

(a) If a person who has been served with a subpoena, which has been issued and served upon him in accordance with the provisions of this section, shall fail to deliver or have delivered the designated documents at the time and place required in the subpoena, on application of the Attorney General the circuit or chancery court having approved the issuance of the subpoena may issue an attachment for such person, returnable immediately, or at such time and place as the court may direct. Bond may be required and fine imposed and proceedings had thereon as in the case of a subpoenaed witness who fails to appear in circuit or chancery court.

(b) Every person who shall knowingly and willfully obstruct, interfere with or impede an investigation under this section by concealing or destroying any documents, papers or other tangible evidence which are relevant to an investigation under this section shall be guilty of a felony and, upon conviction, shall be punished by a fine of not more than Five Thousand Dollars ($5,000.00) or by imprisonment for not more than five (5) years, or by both such fine and imprisonment.

(c) Every person who shall knowingly and willfully endeavor, by means of bribery, force or intimidation, to obstruct, delay or prevent the communication of information to any agent or employee of the Office of the Attorney General or who injures another person for the purpose of preventing the communication of such information or an account of the giving of such information relevant to an investigation under this section shall be guilty of a felony and, upon conviction, shall be punished by a fine of not more than Five Thousand Dollars ($5,000.00) or by imprisonment for not more than five (5) years, or by both such fine and imprisonment.

(d) The provisions of paragraphs (a), (b) and (c) of this subsection shall not prohibit the enforcement of, or prosecution under, any other statutes of this state.

(4)(a) If any person shall refuse, or is likely to refuse, on the basis of his privilege against self-incrimination, to produce the designated documents as requested by a subpoena issued under this section or issued by a court, the Attorney General may request the court, ex parte and in camera, to issue an order requiring such person to produce the documents information which he refuses to give or provide on the basis of his privilege against self-incrimination. The Attorney General may request said order under this subsection when, in his judgment:

(i) The documents sought from such individual may be necessary to the public interest; and

(ii) Such individual has refused or is likely to refuse to produce the designated document on the basis of his privilege against self-incrimination.

Following such request, an order shall issue in accordance with this section requiring such person to produce the documents which he refuses to produce on the basis of his privilege against self-incrimination.

(b) Whenever a witness refuses, on the basis of his privilege against self-incrimination, to produce documents, and the court issues to the witness an order under paragraph (a) of this subsection, the witness may not refuse to comply with the order on the basis of his privilege against self-incrimination, but no documents or information compelled under the aforesaid order, or any information directly or indirectly derived from such documents may be used against the witness in any criminal proceeding, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.

(5) Documents in the possession of the Attorney General gathered pursuant to the provisions of this section and subpoenas issued by him shall be maintained in confidential files with access limited to prosecutorial and other law enforcement investigative personnel on a "need to know" basis and shall be exempt from the provisions of the Mississippi Public Records Act of 1983, except that upon the filing of an indictment or information, or upon the filing of an action for recovery of property, funds or fines, such documents shall be subject to such disclosure as may be required pursuant to the applicable statutes or court rules governing the trial of any such judicial proceeding.

(6) No person, including the Attorney General, a member of his staff, prosecuting attorney, law enforcement officer, witness, court reporter, attorney or other person, shall disclose to an unauthorized person documents, including subpoenas issued and served, gathered by the Attorney General pursuant to the provisions of this section, except that upon the filing of an indictment or information, or upon the filing of an action for recovery of property, funds or fines, or in other legal proceedings, such documents shall be subject to such disclosure as may be required pursuant to applicable statutes and court rules governing the trial of any such judicial proceeding. In event of an unauthorized disclosure of any such documents gathered by the Attorney General pursuant to the provisions of this section, the person making any such unauthorized disclosure shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than One Thousand Dollars ($1,000.00), or imprisonment of not more than six (6) months, or by both such fine and imprisonment.

(7) The powers of the Attorney General under this section shall not diminish the powers of local authorities to investigate or prosecute any type of identity theft crime or any other criminal conduct within their respective jurisdictions, and the provisions of this section shall be in addition to the powers and authority previously granted the Attorney General by common, constitutional, statutory or case law.

HISTORY: Laws, 2004, ch. 526, § 6, eff from and after July 1, 2004.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a publishing error in the next-to-last sentence of (2)(a) by substituting "this chapter" for "this act."

RESEARCH REFERENCES

ALR.

Validity, Construction, and Application of State Computer Crime and Fraud Laws. 87 A.L.R.6th 1.

§ 97-45-3. Computer fraud; penalties.

(1) Computer fraud is the accessing or causing to be accessed of any computer, computer system, computer network or any part thereof with the intent to:

(a) Defraud;

(b) Obtain money, property or services by means of false or fraudulent conduct, practices or representations; or through the false or fraudulent alteration, deletion or insertion of programs or data; or

(c) Insert or attach or knowingly create the opportunity for an unknowing and unwanted insertion or attachment of a set of instructions or a computer program into a computer program, computer, computer system, or computer network, that is intended to acquire, alter, damage, delete, disrupt, or destroy property or otherwise use the services of a computer program, computer, computer system or computer network.

(2) Whoever commits the offense of computer fraud when the damage or loss or attempted damage or loss amounts to a value of less than One Thousand Dollars ($1,000.00) may be punished, upon conviction, by a fine of not more than One Thousand Dollars ($1,000.00), or by imprisonment for not more than six (6) months in the county jail, or by both if the court finds substantial and compelling reasons why the offender cannot be safely and effectively supervised in the community, is not amenable to community-based treatment, or poses a significant risk to public safety. If such a finding is not made, the court shall suspend the sentence of imprisonment and impose a period of probation not exceeding one (1) year or a fine of not more than One Thousand Dollars ($1,000.00), or both. Any person convicted of a third or subsequent offense under this subsection where the value of the property is not less than Five Hundred Dollars ($500.00), shall be imprisoned in the Penitentiary for a term not exceeding three (3) years or fined an amount not exceeding Two Thousand Dollars ($2,000.00), or both.

(3) Whoever commits the offense of computer fraud when the damage or loss or attempted damage or loss amounts to a value of One Thousand Dollars ($1,000.00) or more but less than Five Thousand Dollars ($5,000.00), may be punished, upon conviction, by a fine of not more than Ten Thousand Dollars ($10,000.00) or by imprisonment for not more than five (5) years, or by both such fine and imprisonment.

(4) Whoever commits the offense of computer fraud when the damage or loss or attempted damage or loss amounts to a value of Five Thousand Dollars ($5,000.00) or more but less than Twenty-five Thousand Dollars ($25,000.00), may be punished, upon conviction, by a fine of not more than Ten Thousand Dollars ($10,000.00) or by imprisonment for not more than ten (10) years, or by both such fine and imprisonment.

(5) Whoever commits the offense of computer fraud when the damage or loss or attempted damage or loss amounts to a value of Twenty-five Thousand Dollars ($25.000.00) or more, may be punished, upon conviction, by a fine of not more than Ten Thousand Dollars ($10,000.00) or by imprisonment for not more than twenty (20) years, or by both such fine and imprisonment.

(6) The definition of the term "computer network" includes the Internet, as defined in Section 230 of Title II of the Communications Act of 1934, Chapter 652, 110 Stat. 137, codified at 47 USCS 230.

HISTORY: Laws, 1985, ch. 319, § 2; Laws, 2003, ch. 562, § 5; Laws, 2013, ch. 367, § 1; Laws, 2014, ch. 457, § 31, eff from and after July 1, 2014.

Cross References — White-collar crime investigations, see § 7-5-59.

Organized theft or fraud enterprise applicable to conduct proscribed in this section, see § 97-43-3.1.

Federal Aspects— Section 230, Title II, Communications Act of 1934, see 47 USCS § 230.

JUDICIAL DECISIONS

1. Double jeopardy.

Defendant's indictment charged separate and distinct crimes and did not offend the prohibitions against double jeopardy in doing so because accessing a computer was not a necessary element of tax evasion, and the evasion of taxes was not a necessary element of computer fraud. Jones v. State, 284 So. 3d 855, 2019 Miss. App. LEXIS 550 (Miss. Ct. App. 2019).

§ 97-45-5. Offense against computer users; penalties.

(1) An offense against computer users is the intentional:

(a) Denial to an authorized user, without consent, of the full and effective use of or access to a computer, a computer system, a computer network or computer services; or

(b) Use or disclosure to another, without consent, of the numbers, codes, passwords or other means of access to a computer, a computer system, a computer network or computer services.

(2) Whoever commits an offense against computer users when the damage or loss or attempted damage or loss amounts to a value of less than One Thousand Dollars ($1,000.00) may be punished, upon conviction, by a fine of not more than One Thousand Dollars ($1,000.00), or by imprisonment for not more than six (6) months in the county jail, or by both if the court finds substantial and compelling reasons why the offender cannot be safely and effectively supervised in the community, is not amenable to community-based treatment, or poses a significant risk to public safety. If such a finding is not made, the court shall suspend the sentence of imprisonment and impose a period of probation not exceeding one (1) year or a fine of not more than One Thousand Dollars ($1,000.00), or both. The total value of property taken, stolen or carried away by the person from a single victim shall be aggregated in determining the gravity of the offense. Any person convicted of a third or subsequent offense under this subsection where the value of the property is not

less than Five Hundred Dollars ($500.00), shall be imprisoned in the Penitentiary for a term not exceeding three (3) years or fined an amount not exceeding One Thousand Dollars ($1,000.00), or both.

(3) Whoever commits an offense against computer users when the damage or loss amounts to a value of One Thousand Dollars ($1,000.00) or more but less than Five Thousand Dollars ($5,000.00), may be punished, upon conviction, by a fine of not more than Ten Thousand Dollars ($10,000.00), or imprisonment for not more than five (5) years, or by both such fine and imprisonment.

(4) Whoever commits an offense against computer users when the damage or loss amounts to a value of Five Thousand Dollars ($5,000.00) or more but less than Twenty-five Thousand Dollars ($25,000.00), may be punished, upon conviction, by a fine of not more than Ten Thousand Dollars ($10,000.00), or imprisonment for not more than ten (10) years, or by both such fine and imprisonment.

(5) Whoever commits an offense against computer users when the damage or loss amounts to a value of Twenty-five Thousand Dollars ($25,000.00) or more, may be punished, upon conviction, by a fine of not more than Ten Thousand Dollars ($10,000.00), or imprisonment for not more than twenty (20) years, or by both such fine and imprisonment.

HISTORY: Laws, 1985, ch. 319, § 3; Laws, 2014, ch. 457, § 32, eff from and after July 1, 2014.

Cross References — Organized theft or fraud enterprise applicable to conduct proscribed in this section, see § 97-43-3.1.

RESEARCH REFERENCES

ALR.

Computer programs as property subject to theft. 18 A.L.R.3d 1121.

Criminal liability for misappropriation of trade secret. 84 A.L.R.3d 967.

Disclosure or use of computer application software as misappropriation of trade secret. 30 A.L.R.4th 1250.

Criminal liability for theft of, interference with, or unauthorized use of, computer programs, files, or systems. 51 A.L.R.4th 971.

What is computer "trade secret" under state law. 53 A.L.R.4th 1046.

Validity, Construction, and Application of State Computer Crime and Fraud Laws. 87 A.L.R.6th 1.

Am. Jur.

50 Am. Jur. 2d, Larceny § 59.

14 Am. Jur. Proof of Facts 2d 173, Admissibility of Computerized Business Records.

33 Am. Jur. Trials 1, Defense of Computer Crime.

CJS.

52B C.J.S. Larceny § 28.

§ 97-45-7. Offense against computer equipment; penalties.

(1) An offense against computer equipment or supplies is the intentional modification or destruction, without consent, of computer equipment or supplies used or intended to be used in a computer, computer system or computer network.

(2) Whoever commits an offense against computer equipment or supplies

when the damage or loss or attempted damage or loss amounts to a value of less than One Thousand Dollars ($1,000.00) may be punished, upon conviction, by a fine of not more than One Thousand Dollars ($1,000.00), or by imprisonment for not more than six (6) months in the county jail, or both if the court finds substantial and compelling reasons why the offender cannot be safely and effectively supervised in the community, is not amenable to community-based treatment, or poses a significant risk to public safety. If such a finding is not made, the court shall suspend the sentence of imprisonment and impose a period of probation not exceeding one (1) year or a fine of not more than One Thousand Dollars ($1,000.00), or both. The total value of property taken, stolen or carried away by the person from a single victim shall be aggregated in determining the gravity of the offense. Any person convicted of a third or subsequent offense under this subsection where the value of the property is not less than Five Hundred Dollars ($500.00), shall be imprisoned in the Penitentiary for a term not exceeding three (3) years or fined an amount not exceeding One Thousand Dollars ($1,000.00), or both.

(3) Whoever commits an offense against computer equipment or supplies when the damage or loss amounts to a value of One Thousand Dollars ($1,000.00) or more but less than Five Thousand Dollars ($5,000.00), may be punished, upon conviction, by a fine of not more than Ten Thousand Dollars ($10,000.00) or by imprisonment for not more than five (5) years, or by both such fine and imprisonment.

(4) Whoever commits an offense against computer equipment or supplies when the damage or loss amounts to a value of Five Thousand Dollars ($5,000.00) or more but less than Twenty-five Thousand Dollars ($25,000.00), may be punished, upon conviction, by a fine of not more than Ten Thousand Dollars ($10,000.00) or by imprisonment for not more than ten (10) years, or by both such fine and imprisonment.

(5) Whoever commits an offense against computer equipment or supplies when the damage or loss amounts to a value of Twenty-five Thousand Dollars ($25,000.00) or more, may be punished, upon conviction, by a fine of not more than Ten Thousand Dollars ($10,000.00) or by imprisonment for not more than twenty (20) years, or by both such fine and imprisonment.

HISTORY: Laws, 1985, ch. 319, § 4; Laws, 2014, ch. 457, § 33, eff from and after July 1, 2014.

RESEARCH REFERENCES

ALR.

Computer programs as property subject to theft. 18 A.L.R.3d 1121.

Criminal liability for misappropriation of trade secret. 84 A.L.R.3d 967.

Disclosure or use of computer application software as misappropriation of trade secret. 30 A.L.R.4th 1250.

Criminal liability for theft of, interference with, or unauthorized use of, computer programs, files, or systems. 51 A.L.R.4th 971.

What is computer "trade secret" under state law. 53 A.L.R.4th 1046.

Validity, Construction, and Application of State Computer Crime and Fraud Laws. 87 A.L.R.6th 1.

Am. Jur.

18 Am. Jur. 2d, Conversion § 43.

50 Am. Jur. 2d, Larceny § 59.

14 Am. Jur. Proof of Facts 2d 173, Admissibility of Computerized Business Records.

33 Am. Jur. Trials 1, Defense of Computer Crime.

CJS.

52B C.J.S. Larceny § 28.

§ 97-45-9. Offense against intellectual property; penalties.

(1) An offense against intellectual property is the intentional:

(a) Destruction, insertion or modification, without consent, of intellectual property; or

(b) Disclosure, use, copying, taking or accessing, without consent, of intellectual property.

(2) Whoever commits an offense against intellectual property when the damage or loss or attempted damage or loss amounts to a value of less than One Thousand Dollars ($1,000.00) may be punished, upon conviction, by a fine of not more than One Thousand Dollars ($1,000.00), or by imprisonment for not more than six (6) months in the county jail, or by both if the court finds substantial and compelling reasons why the offender cannot be safely and effectively supervised in the community, is not amenable to community-based treatment, or poses a significant risk to public safety. If such a finding is not made, the court shall suspend the sentence of imprisonment and impose a period of probation not exceeding one (1) year or a fine of not more than One Thousand Dollars ($1,000.00), or both. The total value of property taken, stolen or carried away by the person from a single victim shall be aggregated in determining the gravity of the offense. Any person convicted of a third or subsequent offense under this subsection where the value of the property is not less than Five Hundred Dollars ($500.00), shall be imprisoned in the Penitentiary for a term not exceeding three (3) years or fined an amount not exceeding One Thousand Dollars ($1,000.00), or by both.

(3) Whoever commits an offense against intellectual property when the damage or loss amounts to a value of One Thousand Dollars ($1,000.00) or more but less than Five Thousand Dollars ($5,000.00), the offender may be punished, upon conviction, by a fine of not more than Ten Thousand Dollars ($10,000.00) or by imprisonment for not more than five (5) years, or by both such fine and imprisonment.

(4) Whoever commits an offense against intellectual property when the damage or loss amounts to a value of Five Thousand Dollars ($5,000.00) or more but less than Twenty-five Thousand Dollars ($25,000.00), may be punished, upon conviction, by a fine of not more than Ten Thousand Dollars ($10,000.00) or by imprisonment for not more than ten (10) years, or by both such fine and imprisonment.

(5) Whoever commits an offense against intellectual property when the damage or loss amounts to a value of Twenty-five Thousand Dollars ($25,000.00) or more, may be punished, upon conviction, by a fine of not more than Ten Thousand Dollars ($10,000.00) or by imprisonment for not more than twenty (20) years, or by both such fine and imprisonment.

(6) The provisions of this section shall not apply to the disclosure, use, copying, taking, or accessing by proper means as defined in this chapter.

HISTORY: Laws, 1985, ch. 319, § 5; Laws, 2014, ch. 457, § 34, eff from and after July 1, 2014.

RESEARCH REFERENCES

ALR.

Computer programs as property subject to theft. 18 A.L.R.3d 1121.

Criminal liability for misappropriation of trade secret. 84 A.L.R.3d 967.

Disclosure or use of computer application software as misappropriation of trade secret. 30 A.L.R.4th 1250.

Criminal liability for theft of, interference with, or unauthorized use of, computer programs, files, or systems. 51 A.L.R.4th 971.

What is computer "trade secret" under state law. 53 A.L.R.4th 1046.

Validity, Construction, and Application of State Computer Crime and Fraud Laws. 87 A.L.R.6th 1.

Copyright protection of computer programs. 180 A.L.R. Fed. 1.

Am. Jur.

50 Am. Jur. 2d, Larceny § 59.

5A Am. Jur. Legal Forms 2d, Copyright and Literary and Artistic Property § 72:24 (notice of copyright – including computer storage and retrieval).

14 Am. Jur. Proof of Facts 2d 173, Admissibility of Computerized Business Records.

41 Am. Jur. Proof of Facts 2d 517, Abandonment of Trade Secret.

33 Am. Jur. Trials 1, Defense of Computer Crime.

CJS.

52B C.J.S. Larceny § 28.

§ 97-45-11. Venue.

For the purposes of venue under the provisions of this chapter, any violation of this chapter shall be considered to have been committed:

(a) In any county in which any act was performed in furtherance of any transaction violating this chapter; and

(b) In any county from which, to which or through which any access to a computer, computer system or computer network was made, whether by wire, electromagnetic waves, microwaves or any other means of communication.

HISTORY: Laws, 1985, ch. 319, § 6, eff from and after July 1, 1985.

RESEARCH REFERENCES

ALR.

Necessity of proving venue or territorial jurisdiction of criminal offense beyond reasonable doubt. 67 A.L.R.3d 988.

Where is embezzlement committed for purposes of territorial jurisdiction or venue. 80 A.L.R.3d 514.

Criminal liability for misappropriation of trade secret. 84 A.L.R.3d 967.

Venue in rape cases where crime is committed partly in one place and partly in another. 100 A.L.R.3d 1174.

Criminal liability for theft of, interference with, or unauthorized use of, computer programs, files, or systems. 51 A.L.R.4th 971.

Am. Jur.

21 Am. Jur. 2d, Criminal Law §§ 461 et seq.

§ 97-45-13. Effect on other offenses.

The criminal offenses created by this chapter shall not be deemed to supersede, or repeal, any other criminal offense.

HISTORY: Laws, 1985, ch. 319, § 7, eff from and after July 1, 1985.

§ 97-45-15. "Cyberstalking"; penalties.

(1) It is unlawful for a person to:

(a) Use in electronic mail or electronic communication any words or language threatening to inflict bodily harm to any person or to that person's child, sibling, spouse or dependent, or physical injury to the property of any person, or for the purpose of extorting money or other things of value from any person.

(b) Electronically mail or electronically communicate to another repeatedly, whether or not conversation ensues, for the purpose of threatening, terrifying or harassing any person.

(c) Electronically mail or electronically communicate to another and to knowingly make any false statement concerning death, injury, illness, disfigurement, indecent conduct, or criminal conduct of the person electronically mailed or of any member of the person's family or household with the intent to threaten, terrify or harass.

(d) Knowingly permit an electronic communication device under the person's control to be used for any purpose prohibited by this section.

(2) Whoever commits the offense of cyberstalking shall be punished, upon conviction:

(a) Except as provided herein, the person is guilty of a felony punishable by imprisonment for not more than two (2) years or a fine of not more than Five Thousand Dollars ($5,000.00), or both.

(b) If any of the following apply, the person is guilty of a felony punishable by imprisonment for not more than five (5) years or a fine of not more than Ten Thousand Dollars ($10,000.00), or both:

(i) The offense is in violation of a restraining order and the person has received actual notice of that restraining order or posting the message is in violation of an injunction or preliminary injunction.

(ii) The offense is in violation of a condition of probation, a condition of parole, a condition of pretrial release or a condition of release on bond pending appeal.

(iii) The offense results in a credible threat being communicated to the victim, a member of the victim's family, or another individual living in the same household as the victim.

(iv) The person has been previously convicted of violating this section or a substantially similar law of another state, a political subdivision of another state, or of the United States.

(3) This section does not apply to any peaceable, nonviolent, or nonthreatening activity intended to express political views or to provide lawful informa-

tion to others. This section shall not be construed to impair any constitutionally protected activity, including speech, protest or assembly.

HISTORY: Laws, 2003, ch. 562, § 6, eff from and after July 1, 2003.

Editor's Notes — Laws of 2003, ch. 562, § 12, provides as follows:
"SECTION 12. If any provision of this act is held by a court to be invalid, such invalidity shall not affect the remaining provisions of this act, and to this end the provisions of this act are declared severable."

Cross References — Exploitation of children, generally, including by means of computer, see §§ 97-5-31 et seq.

RESEARCH REFERENCES

ALR.
Validity, Construction, and Application of State Computer Crime and Fraud Laws. 87 A.L.R.6th 1.

§ 97-45-17. Posting of messages through electronic media for purpose of causing injury to any person; penalties.

(1) A person shall not post a message for the purpose of causing injury to any person through the use of any medium of communication, including the Internet or a computer, computer program, computer system or computer network, or other electronic medium of communication without the victim's consent, for the purpose of causing injury to any person.

(2) A person who violates this section, upon conviction, shall be guilty of a felony punishable by imprisonment for not more than five (5) years or a fine of not more than Ten Thousand Dollars ($10,000.00), or both.

HISTORY: Laws, 2003, ch. 562, § 7, eff from and after July 1, 2003.

Editor's Notes — Laws of 2003, ch. 562, § 12, provides as follows:
"SECTION 12. If any provision of this act is held by a court to be invalid, such invalidity shall not affect the remaining provisions of this act, and to this end the provisions of this act are declared severable."

RESEARCH REFERENCES

ALR.
Validity, Construction, and Application of State Computer Crime and Fraud Laws. 87 A.L.R.6th 1.

§ 97-45-19. Identity theft.

(1) A person shall not obtain or attempt to obtain personal identity information of another person with the intent to unlawfully use that information for any of the following purposes without that person's authorization:

(a) To obtain financial credit.

(b) To purchase or otherwise obtain or lease any real or personal property.

(c) To obtain employment.

(d) To obtain access to medical records or information contained in medical records.

(e) To commit any illegal act.

(2)(a) A person who violates this section is guilty of a felony punishable by imprisonment for not less than two (2) nor more than fifteen (15) years or a fine of not more than Ten Thousand Dollars ($10,000.00), or both.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (2), if the violation involves an amount of less than Two Hundred Fifty Dollars ($250.00), a person who violates this section may be found guilty of a misdemeanor punishable by imprisonment in the county jail for a term of not more than six (6) months, or by a fine of not more than One Thousand Dollars ($1,000.00), or both, in the discretion of the court.

(c) For purposes of determining the amount of the violation, the value of all goods, property, services and other things of value obtained or attempted to be obtained by the use of an individual's identity information shall be aggregated.

(3) This section does not prohibit the person from being charged with, convicted of, or sentenced for any other violation of law committed by that person using information obtained in violation of this section.

(4) This section does not apply to a person who obtains or attempts to obtain personal identity information of another person pursuant to the discovery process of a civil action, an administrative proceeding or an arbitration proceeding.

(5) Upon the request of a person whose identifying information was appropriated, the Attorney General may provide assistance to the victim in obtaining information to correct inaccuracies or errors in the person's credit report or other identifying information; however, no legal representation shall be afforded such person by the Office of the Attorney General.

(6) A person convicted under this section or under Section 97-19-85 shall be ordered to pay restitution as provided in Section 99-37-1 et seq., and any legal interest in addition to any other fine or imprisonment which may be imposed.

HISTORY: Laws, 2003, ch. 562, § 8; Laws, 2004, ch. 526, § 1; brought forward without change, Laws, 2014, ch. 457, § 35, eff from and after July 1, 2014.

Editor's Notes — Laws of 2003, ch. 562, § 12, provides as follows:

"SECTION 12. If any provision of this act is held by a court to be invalid, such invalidity shall not affect the remaining provisions of this act, and to this end the provisions of this act are declared severable."

Cross References — Organized theft or fraud enterprise applicable to conduct proscribed in this section, see § 97-43-3.1.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

Enhancement of penalty for violation of provisions of this section under certain circumstances, see § 99-19-401.

§ 97-45-21. Jurisdiction for bringing criminal action.

(1) For purposes of bringing a criminal action under this chapter, a person

who causes, by any means, the access of a computer, computer system or computer network in one jurisdiction from another jurisdiction is deemed to have personally accessed the computer, computer system or computer network in each jurisdiction.

(2) For offenses under Section 97-45-19 or Section 97-19-85 which occur in multiple jurisdictions but which do not involve a computer, computer system or computer network, jurisdiction is deemed to be proper in each jurisdiction where any element of the offense occurred.

HISTORY: Laws, 2003, ch. 562, § 9; Laws, 2004, ch. 526, § 2, eff from and after July 1, 2004.

Editor's Notes — Laws of 2003, ch. 562, § 12, provides as follows:
"SECTION 12. If any provision of this act is held by a court to be invalid, such invalidity shall not affect the remaining provisions of this act, and to this end the provisions of this act are declared severable."

§ 97-45-23. Investigations and prosecutions.

Prosecutions for violations under Title 97, Chapter 45, or Section 97-5-33, may be instituted by the Attorney General, his designee or the district attorney of the district in which the violation occurred, and shall be conducted in the name of the State of Mississippi. In the prosecution of any criminal proceeding in accordance with this subsection by the Attorney General, his designee, and in any proceeding before a grand jury in connection therewith, the Attorney General, or his designee, shall exercise all the powers and perform all the duties which the district attorney would otherwise be authorized or required to exercise or perform. The Attorney General, or his designee, shall have the authority to issue and serve subpoenas in the investigation of any matter which may violate Title 97, Chapter 45, or Section 97-5-33.

HISTORY: Laws, 2003, ch. 562, § 10, eff from and after July 1, 2003.

Editor's Notes — Laws of 2003, ch. 562, § 12, provides as follows:
"SECTION 12. If any provision of this act is held by a court to be invalid, such invalidity shall not affect the remaining provisions of this act, and to this end the provisions of this act are declared severable."

§ 97-45-25. Additional penalties for violations under this chapter; funding of expenses of Attorney General's Cyber Crime Central or special fund program; deposit of user charges and fees authorized under this section into State General Fund.

(1) In a proceeding for violations under Title 97, Chapter 45, Section 97-5-33 or Section 97-19-85, the court, in addition to the criminal penalties imposed under this chapter, shall assess against the defendant convicted of such violation double those reasonable costs that are expended by the Office of Attorney General, the district attorney's office, the sheriff's office or police

department involved in the investigation of such case, including, but not limited to, the cost of investigators, software and equipment utilized in the investigation, together with costs associated with process service, court reporters and expert witnesses. The Attorney General or district attorney may institute and maintain proceedings in his name for enforcement of payment in the circuit court of the county of residence of the defendant and, if the defendant is a nonresident, such proceedings shall be in the Circuit Court of the First Judicial District of Hinds County, Mississippi. The Attorney General or district attorney shall distribute the property or interest assessed under this section as follows:

(a) Fifty percent (50%) shall be distributed to the unit of state or local government whose officers or employees conducted the investigation into computer fraud, identity theft or child exploitation which resulted in the arrest or arrests and prosecution. Amounts distributed to units of local government shall be used for training or enforcement purposes relating to detection, investigation or prosecution of computer and financial crimes, including computer fraud or child exploitation.

(b) Where the prosecution was maintained by the district attorney, fifty percent (50%) shall be distributed to the county in which the prosecution was instituted by the district attorney and appropriated to the district attorney for use in training or enforcement purposes relating to detection, investigation or prosecution of computer and financial crimes, including computer fraud or child exploitation. Where a prosecution was maintained by the Attorney General, fifty percent (50%) of the proceeds shall be paid or distributed into the Attorney General's Cyber Crime Central or the Attorney General's special fund to be used for consumer fraud education and investigative and enforcement operations of the Office of Consumer Protection. Where the Attorney General and the district attorney have participated jointly in any part of the proceedings, twenty-five percent (25%) of the property forfeited shall be paid to the county in which the prosecution occurred, and twenty-five percent (25%) shall be paid to the Attorney General's Cyber Crime Central or the Attorney General's special fund to be used for the purposes as stated in this paragraph.

(2) From and after July 1, 2016, the expenses of the Attorney General's Cyber Crime Central or Attorney General's special fund program shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law and as determined by the State Fiscal Officer.

(3) From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

HISTORY: Laws, 2003, ch. 562, § 11; Laws, 2004, ch. 526, § 3; Laws, 2017, 1st Ex Sess, ch. 7, § 44, eff from and after passage (approved June 23, 2017).

Editor's Notes — Laws of 2003, ch. 562, § 12, provides as follows:
"SECTION 12. If any provision of this act is held by a court to be invalid, such

invalidity shall not affect the remaining provisions of this act, and to this end the provisions of this act are declared severable."

§ 97-45-27. Identity theft; victim authorized to expunge record of false charges accrued on account of activities of the perpetrator.

Any person whose name or other identification has been used without his consent or authorization by another person, with the use resulting in charges, an arrest record, or a conviction putatively on the record of the person whose name or other identification was appropriated, the person whose name or other identification has been used without his consent or authorization may file a petition for expunction of such charges or arrest record or conviction, or any of them, with any court which has jurisdiction over the matter.

HISTORY: Laws, 2004, ch. 526, § 4, eff from and after July 1, 2004.

§ 97-45-29. Identity theft; Attorney General authorized to issue "Identity Theft Passports" verifying that expunction order has been entered or police report has been filed; access to identity theft information.

(1) A person who has petitioned the court pursuant to Section 97-45-27 to expunge any charges, arrest record or conviction falsely entered against the person as a result of the appropriation of his name or other identifying information may submit to the Attorney General a certified copy of a court order obtained. The Office of the Attorney General may issue an "Identity Theft Passport" verifying that such order has been entered.

(2) Any person who has filed a police report alleging that the person's name or other identification has been used without the person's consent or authorization by another person may submit a copy of the police report to the Attorney General. The Office of the Attorney General may issue an "Identity Theft Passport" stating that such police report has been submitted.

(3) The Office of the Attorney General may provide access to identity theft information to law enforcement agencies and individuals who have submitted a police report or court order pursuant to this chapter and any other person or entity as appropriate.

HISTORY: Laws, 2004, ch. 526, § 5, eff from and after July 1, 2004.

§ 97-45-31. Using scanning device or reencoder to capture encoded information from magnetic strip on credit, debit or other payment card; definitions; penalty.

(1) For the purposes of this section, the following terms shall have the meanings ascribed to them unless the context clearly requires otherwise:

(a) "Cardholder" means any person:

(i) Named on the face of a credit card to whom or for whose benefit the credit card is issued by an issuer; or

(ii) In possession of a credit card with the consent of the person to whom the credit card was issued.

(b) "Credit card" means:

(i) Any instrument or device, whether known as a credit card, charge card, credit plate, courtesy card, identification card or any other name that is issued with or without fee by an issuer for the use of the cardholder in obtaining money, goods, services or anything else of value, either on credit or in consideration of an undertaking or guaranty by the issuer of the payment of a check drawn by the cardholder, on a promise to pay in part or in full therefor at a future time, whether or not all or any part of the indebtedness that is represented by the promise to make deferred payment is secured or unsecured.

(ii) A debit card, electronic benefit transfer card or other access instrument or device, other than a check that is signed by the holder or other authorized signatory on the deposit account, that draws funds from a deposit account in order to obtain money, goods, services or anything else of value.

(iii) A stored value card, smart card or other instrument or device that enables a person to obtain goods, services or anything else of value through the use of value stored on the card instrument or device.

(iv) The number that is assigned the card, instrument or device, even if the physical card, instrument or device is not used or presented.

(c) "Issuer" means any business organization, state agency or financial institution, or its duly authorized agent, that issues a credit card.

(d) "Merchant" means a person who is authorized under a written contract with a participating party to furnish money, goods, services or anything else of value on presentation of a credit card by a cardholder.

(e) "Reencoder" means an electronic device that places encoded information from the magnetic strip or stripe of a credit card onto the magnetic strip or stripe of a different credit card.

(f) "Scanning device" means a scanner, reader or other electronic device that is used to access, read, scan, obtain, memorize or store, temporarily or permanently, information that is encoded on a magnetic strip or stripe of a credit card.

(2)(a) It is unlawful for a person to use a scanning device or reencoder without the permission of the cardholder of the credit card from which the information is being scanned or reencoded with the intent to defraud the cardholder, the issuer or a merchant.

(b) A person who violates this section commits a felony punishable, upon conviction thereof, by imprisonment not to exceed five (5) years, a fine not to exceed Ten Thousand Dollars ($10,000.00), or both.

HISTORY: Laws, 2005, ch. 511, § 4, eff from and after July 1, 2005.

§ 97-45-33. Online impersonation; penalties.

(1) Nothwithstanding any other provision of law, any person who knowingly and without consent impersonates another actual person through or on an Internet website or by other electronic means for purposes of harming, intimidating, threatening or defrauding another person is guilty of a misdemeanor.

(2) For purposes of this section, an impersonation is credible if another person would reasonably believe, or did reasonably believe, that the defendant was or is the person who was impersonated.

(3) For purposes of this section, "electronic means" shall include opening an email account or an account or profile on a social networking Internet website in another person's name.

(4) A violation of this section is punishable by a fine of not less than Two Hundred Fifty Dollars ($250.00) and not exceeding One Thousand Dollars ($1,000.00) or by imprisonment for not less than ten (10) days and not more than one (1) year, or both.

(5) This section shall not preclude prosecution under any other provision of law and shall be considered supplemental thereto.

HISTORY: Laws, 2011, ch. 340, § 1, eff from and after July 1, 2011.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

Index

A

ACCOMPLICES.
Firearms and other weapons.
Aiding or encouraging minor to possess weapon, §97-37-17.
Shoplifting.
Employee giving away merchandise without consent of merchant, §97-23-99.
Juvenile offenders, §§97-23-94, 97-23-94.1.

ACCOUNTS AND ACCOUNTING.
Bad checks.
Recovery of restitution, §97-19-77.
Tax collectors.
Failure to make settlement, §97-11-47.

ACKNOWLEDGMENTS.
Certificate of acknowledgment or proof of recordable instrument, §§97-21-7, 97-21-63.
Personating another to acknowledge recorded instrument, §97-19-33.

ACQUITTAL.
Deadly weapons.
Return of forfeited weapon upon, §97-37-3.

ACTIONS.
Charitable bingo.
Enforcement powers, §97-33-109.
False personation.
Personating another to act in suit, §97-19-33.
Levees.
Recovery of damages, §97-15-21.
Metal property identification or ownership.
Scrap metal dealers or other purchasers.
Contesting, §97-17-71.
Racketeer influenced and corrupt organizations.
Civil proceedings, §97-43-9.
Scrap metal dealers or other purchasers.
Metal property transactions.
Contesting identification or ownership, §97-17-71.

ACTIONS —Cont'd
Shoplifting.
Civil remedy for shoplifting violations, §97-23-96.
Street gangs.
Civil action authorized, §97-44-5.
Complaint process, §97-44-7.
Punitive damages, §97-44-13.
Service of process, §97-44-11.
Venue, §97-44-9.

ADULTERATED AND MISBRANDED FOOD.
Penalty, §97-27-1.

ADULTERY, §§97-29-1 to 97-29-9.
Going out of state to marry, §97-29-9.
Incestuous adultery, §§97-29-5, 97-29-29.
Incestuous relationship, §97-29-5.
Teacher and pupil, §97-29-3.
Unlawful cohabitation, §97-29-1.

ADVERTISING.
Consumer protection.
False advertising, §§97-23-1 to 97-23-5.
Deceptive advertising, §97-23-3.
False advertising, §§97-23-1 to 97-23-5.
Unlawful, penalty, §97-23-1.
Untrue, deceptive or misleading, penalty, §97-23-3.
Fantasy contests.
Advertisements for contests and prizes, §97-33-305.
Misleading advertising, §97-23-3.
Pulling down advertisements, §97-23-5.

AFFIDAVITS.
Obscenity prosecutions, §97-29-101.

AGE.
Electronic cigarettes and other alternative nicotine products.
Distribution of alternative nicotine products to underage persons.
Verification of age, §97-32-51.

AGENTS.
Bribery.
Public or private entities, §§97-11-11, 97-11-13.
Embezzlement, §97-23-19.

AGENTS —Cont'd
Lotteries.
Acting as agent for lottery, §97-33-47.

AGRICULTURE.
Larceny.
Severing crops or other improvements, §97-17-47.
Liens.
Removing agricultural products from premises subject to lien, §97-17-73.

AIDING AND ABETTING.
Firearms and other weapons.
Aiding or encouraging minor to possess weapon, §97-37-17.
Shoplifting.
Employee giving away merchandise without consent of merchant, §97-23-99.
Juvenile offenders, §§97-23-94, 97-23-94.1.

AIDS AND HIV.
Criminal exposure of another to certain diseases, §97-27-14.
Endangerment by bodily substance, §97-27-14.

AIR CONDITIONER EVAPORATOR COILS OR CONDENSERS.
Sale for scrap.
Cash payments prohibited, §97-17-71.2.
Check or money order.
Payment method, §97-17-71.2.
Criminal penalty.
Violations, §97-17-71.2.
Requirements, §97-17-71.2.

AIRCRAFT.
Boarding with dangerous or deadly instrument, §97-25-55.
Commercial security personnel.
Boarding aircraft with dangerous or deadly weapon, §97-25-55.
Criminal forfeitures.
First degree arson, §97-17-4.
Forfeiture.
First degree arson, §97-17-4.
Law enforcement officers.
Boarding aircraft with dangerous or deadly weapon, §97-25-55.
Piracy, §97-25-55.
Racketeer influenced and corrupt organizations.
Seizure and forfeiture of property, §97-43-11.

AIRCRAFT PIRACY, §97-25-55.

AIR PISTOLS.
Student possession of weapons.
Exception to prohibition, §97-37-17.

AIRPORTS.
Air operations or sterile areas.
Trespass, §97-17-87.
Trespass.
Air operations or sterile areas, §97-17-87.

AIR RIFLES.
Student possession of weapons.
Exception to prohibition, §97-37-17.

ALCOHOLIC BEVERAGES.
Emergency medical assistance requested for another, immunity from prosecution, §97-31-55.
Good Samaritans.
Emergency medical assistance requested for another, immunity from prosecution, §97-31-55.
Offenses, §§97-31-5 to 97-31-55.
Agents or assistants of seller or buyer.
Sale, possession, etc., §97-31-29.
Alcoholic preparations, §§97-31-5 to 97-31-11.
Elixir of orange peel, §97-31-11.
Ginger extracts, §97-31-11.
Pear extract, §97-31-11.
Permit requirement, §97-31-7.
Recordkeeping requirement, §97-31-9.
Sale or storage, §97-31-5.
Beer gardens, §§97-31-27, 97-31-31.
Consignment.
Delivery of alcohol or wine to person other than consignee, §97-31-15.
Consumption of confiscated liquor, §97-31-19.
Correctional inmates, §97-31-35.
Correctional officers.
Sale, possession, etc., §97-31-35.
Denatured alcohol, §97-31-17.
Emergency medical assistance requested for another, immunity from prosecution, §97-31-55.
Homemade wine exception, §97-31-21.
Home sales, §§97-31-29, 97-31-31.
Interstate transport, §97-31-47.
Jail inmates, §97-31-35.
Moonshining, §§97-31-19 to 97-31-23.
Patient medicines, §97-31-25.
Penalties.
General penalty provision, §97-31-53.

ALCOHOLIC BEVERAGES —Cont'd
Offenses —Cont'd
  Pharmacists and pharmacies.
    Patient medicines, §97-31-25.
    Reliance upon druggist exception as defense, §97-31-33.
    Sale, possession, etc., §97-31-45.
  Possession of still, §97-31-23.
  Prison convicts, §97-31-35.
  Prison guards.
    Sale, possession, etc., §97-31-35.
  Prohibited conduct, §97-31-21.
  Shot houses, §§97-31-27, 97-31-31.
  Solicitation of orders for liquors, etc., §97-31-49.
  Storage of confiscated liquors, stills, etc., §97-31-19.
  Transporting intoxicating liquors, §97-31-47.
  Witnesses.
    Immunity from prosecution, §97-31-51.
Sacramental wine, §§97-31-33, 97-31-37, 97-31-41.
Sales.
  For medicinal purposes, §§97-31-39, 97-31-43.
Wine.
  Sacramental wine.
    Religious exception to prohibition, §97-31-33.
    Sale by druggists, §§97-31-37, 97-31-41.

ALTERNATIVE NICOTINE PRODUCTS.
Distribution of alternative nicotine products to underage persons, §97-32-51.
  Educational property, sale or furnishing to underage person near, §97-32-52.

ALUMINUM.
Aluminum property.
  Defined, §97-17-71.
Scrap metal dealers and other purchasers.
  Purchase transactions, §§97-17-71 to 97-17-71.2.

AMERICAN LEGION.
Unauthorized use of membership buttons, insignia, etc., §97-19-43.

AMERICAN VETERANS OF WORLD WAR II.
Unauthorized use of membership buttons, insignia, etc., §97-19-43.

ANAL INTERCOURSE, §97-29-59.

ANIMAL CRUELTY, §§97-41-1 to 97-41-23.

ANIMALS.
Cruelty to animals, §§97-41-1 to 97-41-23.
Dog and cat protection law of 2011, §97-41-16.
Dumping dead wildlife or wildlife parts on highways and private property, §97-15-32.
False pretenses.
  Registering false pedigree, §97-19-49.
Mississippi dog and cat protection law of 2011, §97-41-16.
Shooting near dwelling house.
  Causing damage to property, domesticated animal or livestock, §97-37-30.

ANIMALS RUNNING AT LARGE.
Stallion or jack, §97-29-57.

ANSWERS.
Forfeitures.
  Trademarks and recordings violations.
    Civil forfeiture.
      Petition for forfeiture, §97-21-103.
Trademarks and recordings violations.
  Civil forfeiture.
    Petition for forfeiture, §97-21-103.

ANTIQUE COIN MACHINES.
Exception to gambling devices prohibition, §97-33-7.

APPEALS.
Fantasy contests.
  Disciplinary proceedings, §97-33-315.
Scrap metal dealers.
  Registration violations.
    Review of final order of secretary of state, §97-17-71.1.

ARREST.
Dog fights.
  Participants, §97-41-19.
Dueling, §97-39-9.

ARSENIC, §§97-27-25 to 97-27-29.

ARSON, §§97-17-1 to 97-17-14.
Aggravated assault upon fire fighters, law enforcement officers or emergency medical personnel.
  Injury-causing arson, §97-17-14.

ARSON —Cont'd
Criminal forfeiture of property, §97-17-4.
First degree arson.
  Burning dwelling house or outbuilding, §97-17-1.
  Failure to report accidental fires, §97-17-3.
  Juvenile offenders, §97-17-3.
  Places of worship, §97-17-3.
Fourth degree arson.
  Attempt to burn, §97-17-9.
Injury-causing arson.
  Aggravated assault upon fire fighters, law enforcement officers or emergency medical personnel, §97-17-14.
Insured property, §97-17-11.
RICO, §§97-43-1 to 97-43-11.
Second degree arson.
  Burning other buildings or structures, §97-17-5.
Third degree arson.
  Burning personal property, §97-17-7.
Willfully or negligently firing woods, marsh, etc., §97-17-13.

ASSAULT.
Air piracy.
  Assault with intent to commit air piracy, §97-25-55.
Emergency medical technicians.
  Arson.
    Aggravated assault by injury-causing arson, §97-17-14.
Fire fighters.
  Aggravated assault upon fire fighter by injury-causing arson, §97-17-14.
Law enforcement officers.
  Arson.
    Aggravated assault by injury-causing arson, §97-17-14.

ASSOCIATIONS.
Prostitution.
  Promoting prostitution.
    Punishment for corporations, partnerships, etc, §97-29-51.

ASSUMPTION OF RISK.
Criminal trespass, §97-17-103.

ATHLETICS.
Bribery.
  Professional or amateur games, §97-29-17.

ATHLETICS —Cont'd
Bribery —Cont'd
  Wrestling matches excepted, §97-29-17.
Fantasy contests, §§97-33-301 to 97-33-317.
Ticket scalping, §97-23-97.

ATMS.
Credit card fraud.
  Use of card to operate ATM with intent to defraud, §97-19-21.
Fraudulent use of ATM cards, §97-19-85.
  Credit cards, §97-19-21.

ATOMIC ENERGY.
Nuclear sabotage, §97-25-57.

ATTEMPTS TO COMMIT CRIME.
Arson, fourth degree.
  Attempt to burn, §97-17-9.
Deadly weapons.
  Use or attempt to use, §97-37-1.

ATTORNEY GENERAL.
Charitable bingo.
  Monitoring of licensee, §97-33-109.
  Representation of commission, §97-33-109.
Counseling or defending criminal defendants, §97-11-3.
Felony dumping of solid wastes.
  Initiation of criminal prosecution, §97-15-30.
Forfeitures.
  Trademarks and recordings violation.
    Civil forfeiture proceedings, §§97-21-101, 97-21-103.
Identity theft.
  Investigations.
    Authority in conducting, §97-45-29.
Investigators.
  Firearms or other weapons.
    Carrying, §97-37-7.
Piracy of recordings.
  Confiscation of illegal recordings, §97-23-91.
Racketeer influenced and corrupt organizations.
  Intervention by attorney general, §97-43-9.
Removal from office.
  Counseling or defending criminal defendants, §97-11-3.
Tobacco sales to underage persons.
  Law enforcement reports, §97-32-5.
  Unannounced inspections, §97-32-21.

ATTORNEY GENERAL —Cont'd
Trademarks and recordings violation.
  Civil forfeiture proceedings, §§97-21-101, 97-21-103.

ATTORNEYS AT LAW.
Unlicensed practice, §97-23-43.

ATTORNEYS' FEES.
Criminal trespass.
  Recovery in civil action, §97-17-103.
Racketeer influenced and corrupt organizations.
  Recovery in civil proceedings, §97-43-9.
Restraint of trade.
  Unlawful boycott, §97-23-85.
Scrap metal dealers or other purchasers.
  Metal property purchases.
    Person selling stolen property to dealer or purchaser, §97-17-71.
Shoplifting.
  Civil remedy for shoplifting violations, §97-23-96.

AUCTIONS.
Confiscated firearms.
  Sale at auction, §97-37-3.
Racketeer influenced and corrupt organizations.
  Seizure and forfeiture of property.
    Sale of property at public auction, §97-43-11.

AUDITS AND AUDITORS.
Charitable bingo.
  Enforcement powers, §97-33-109.
Fantasy contests, §97-33-305.

AUTOMATED TELLER MACHINES.
Credit card fraud.
  Use of card to operate ATM with intent to defraud, §97-19-21.
Fraudulent use of ATM cards, §97-19-85.
  Credit cards, §97-19-21.

AUTOMATIC TELLER MACHINES.
Credit card fraud.
  Use of card to operate ATM with intent to defraud, §97-19-21.
Fraudulent use of ATM cards, §97-19-85.
  Credit cards, §97-19-21.

B

BAD CHECKS, §§97-19-55 to 97-19-81.
Casino markers.
  Restitution and service charges, §97-19-75.
Closing account with insufficient funds to cover outstanding checks, §97-19-55.
Complaint procedures, §§97-19-75, 97-19-79.
Conduct constituting, §97-19-55.
Electronically converted checks or electronic commercial debits.
  Insufficient funds, §97-19-55.
  Penalties, §97-19-67.
  Prima facie evidence of identity of party drawing on account, §97-19-62.
  Returned undelivered notice as intent to defraud, §97-19-57.
    When notice not required, §97-19-61.
  Separate violation constitutes separate offense, §97-19-65.
  Statement of reason for dishonor, §97-19-63.
Fees.
  Lenders and retailers, §97-19-81.
Habitual offenders, §97-19-67.
Immunity.
  False arrest or false imprisonment.
    Causing arrest or imprisonment of drawer, §97-19-69.
Multiple violations, separate offenses, §97-19-65.
Penalties, §97-19-67.
Presumption of fraudulent intent, §97-19-57.
Prima facie evidence.
  Identity of party issuing, uttering or delivering check, §97-19-62.
  Return undeliverable notice as intent to defraud, §97-19-57.
Restitution procedures, §§97-19-73 to 97-19-79.
  Accounting of funds, §97-19-77.
  Additional penalty, §97-19-67.
  Construction of provisions, §97-19-73.
  Distribution of funds, §97-19-77.
  District attorney assistance in recovery of restitution, §97-19-73.

BAD CHECKS —Cont'd
Restitution procedures —Cont'd
  Failure to make restitution, §§97-19-75, 97-19-79.
  Restitution, defined, §97-19-75.
  Restitution agreement, §97-19-75.
Retail bad check fees, §97-19-81.
Returned undelivered notice as intent to defraud, §97-19-57.
Separate violation constitutes separate offense, §97-19-65.
Statement of reason for dishonor, §97-19-63.
Statutory notice, §97-19-57.
  When notice not required, §97-19-61.

BAILMENTS.
Aircraft.
  Boarding aircraft with dangerous or deadly weapon or instrument.
    Exception for bailee, §97-25-55.
Embezzlement.
  Bailees, §97-23-19.
  Property held in trust or received on contract, §97-23-25.
Rental storage batteries.
  General provisions, §§97-23-55 to 97-23-61.
Rental vehicles.
  Theft under lease or rental agreement, §97-17-64.

BALLAST.
Discharging in harbor, §97-15-43.

BANK GUARDS.
Persons permitted to carry deadly weapons, §97-37-7.

BANKS AND FINANCIAL INSTITUTIONS.
Credit card fraud, §§97-19-5 to 97-19-31.
False representation to obtain credit card, §97-19-85.
Fraud and deceit.
  False representation to obtain credit card, §97-19-85.
  Fraudulent use of credit or debit card numbers, §97-19-85.
Money laundering, §97-23-101.

BARBERS.
Disorderly conduct, §97-35-5.

BATH HOUSES.
Peeping Tom law, §97-29-61.

BATTERIES.
Rental storage batteries, §§97-23-55 to 97-23-61.

BB GUNS.
Student possession of weapons.
  Exception to prohibition, §97-37-17.

BEACHES.
Littering.
  Breakable containers or injurious debris, §97-27-9.

BEAUTY SALONS.
Disorderly conduct, §97-35-5.

BEER KEGS.
Scrap metal dealers.
  Metal property purchase transactions generally, §§97-17-71 to 97-17-71.2.

BETTING.
Charitable bingo.
  General provisions, §§97-33-50 to 97-33-203.
Gambling, §§97-33-1 to 97-33-49.
Lotteries, §§97-33-31 to 97-33-49.

BIGAMY, §§97-29-13, 97-29-15.
Teaching of polygamy, §97-29-43.

BINGO, §§97-33-50 to 97-33-203.
Accounts and accounting.
  Examination of books and records, §97-33-73.
Classes of organizations, §97-33-107.
Commercial lessor's license, §§97-33-201, 97-33-203.
Conflicts of interest.
  Gaming commission, §97-33-105.
  Overlapping of financial interest, §97-33-81.
Definitions, §97-33-53.
Disposition of proceeds, §97-33-52.
Eligibility to conduct games, §97-33-52.
Exemptions from act, §97-33-51.
Expenses.
  Allowable expenses, §97-33-69.
  Charitable bingo law, expenses of administration to be defrayed by appropriation, §§97-33-51, 97-33-101.
Frequency of sessions, §97-33-67.
Furnisher of services or equipment.
  Ineligible to conduct games, §97-33-69.
Gambling generally, §§97-33-1 to 97-33-49.
Gaming commission.
  Conflicts of interest, §97-33-105.
  Control of games, §97-33-65.

BINGO —Cont'd

Gaming commission —Cont'd
  Duties and responsibilities, §97-33-107.
  Enforcement powers and actions, §97-33-109.
  Examination of books and records, §97-33-73.
  Records and reports to, §97-33-71.

Inspection by agents, §97-33-65.

Juvenile employees, §97-33-67.

Length of sessions, §97-33-67.

Licenses.
  Application.
    Filing requirements, §97-33-55.
    Investigation of applicants, §97-33-57.
  Commercial lessor's license, §97-33-203.
  Denial of license, §97-33-61.
  Disciplinary action against licensee, §97-33-57.
    Gaming commission, §97-33-65.
    Manufacturers of supplies and equipment, §97-33-79.
  Emergency financial relief.
    Special licenses, §97-33-59.
  Judicial review of denial of license, §97-33-61.
  Manufacturers of supplies and equipment, §97-33-79.
  Monitoring of licensee, §97-33-109.
  Original application fee, §97-33-55.
  Special charitable limited license requirement, §97-33-59.
  Special license for emergency financial relief, §97-33-59.
  Term of license, §97-33-57.

Manufacturers of supplies and equipment.
  Conflicts of interest, §§97-33-81, 97-33-105.
  Disciplinary action against licensee, §97-33-201.
  Rental agreements with distributors, §97-33-203.
  Sale to licensee, §97-33-79.

Organization authorized to conduct games, §97-33-52.

Penalties, §97-33-75.

Prize limits, §97-33-67.

Pull-tabs, §97-33-77.

Purchase of supplies.
  Licensed suppliers, §97-33-67.

Records and reports, §97-33-52.
  Annual report by commission, §97-33-103.

BINGO —Cont'd

Records and reports —Cont'd
  Manufacturers of supplies and equipment, §97-33-79.
  Receipt by commission, §97-33-71.

Rental rates and other charges.
  Allowable fees, §97-33-203.

Right of entry on premises, §97-33-65.

Sanctions, §97-33-75.

Supervisory personnel.
  Who may conduct games, §97-33-69.

Title of act, §97-33-50.

Who may conduct games, §§97-33-52, 97-33-69.

BIRDS.

Cruelty to animals generally, §§97-41-1 to 97-41-23.

BLIND AND VISUALLY IMPAIRED.

Guide dogs.
  Harassment, §97-41-21.

BLOCKING HIGHWAYS, ROADS AND STREETS, §§97-15-37, 97-35-23, 97-35-25.

BOARD OF SUPERVISORS.

Purposeful avoidance of knowledge of offense, §97-11-35.

BOATS AND OTHER SMALL WATERCRAFT.

Alcoholic beverage offenses.
  Shot houses, §§97-31-29, 97-31-31.

Burglary, §97-17-33.

Obstructing waterways or navigable channels, §§97-15-43, 97-15-45.

BONDS, SURETY.

Cruelty to animals.
  Hearing on seizure, §97-41-2.

False personation.
  Personating another to become bail or surety, §97-19-33.

Obscenity.
  Prosecutor's bond, §§97-29-101 to 97-29-105.

BOOTLEG LIQUOR, §§97-31-19 to 97-31-23.

BOUNCED CHECKS.

Bad checks generally, §§97-19-55 to 97-19-81.

BOUNDARIES.

Landmarks.
  Altering or destroying, §97-17-15.

BOYCOTTS.
Intimidating elector to procure vote, §97-13-37.
Unlawful restraint of trade, §97-23-85.

BRANCH BANKS.
False pretenses.
  Insolvent bank receiving deposits, §97-19-47.

BRASS.
Electrical, communications or utility brass.
  Scrap metal dealers.
    Metal property purchase transactions generally, §§97-17-71 to 97-17-71.2.

BREACH OF PROMISE TO MARRY.
Seduction, §97-29-55.

BREAKING AND ENTERING.
Burglary, §§97-17-17 to 97-17-37.

BREAST FEEDING.
Breach of the peace.
  Exception, §97-35-15.
Disorderly conduct.
  Exceptions, §97-35-7.
Indecent exposure.
  Exceptions, §§97-29-31, 97-35-11.

BRIBERY.
Agents, §§97-11-11, 97-11-13.
Athletic contests, §97-29-17.
Election bribery, §§97-13-1, 97-13-3.
Highway commission members and employees, §97-15-3.
Political candidates, §§97-11-11, 97-11-13.
Professional or amateur games, §97-29-17.
Public officers and employees, §§97-11-11, 97-11-13.
  Offer of inducement to influence accomplishment of official act, §97-11-53.
Trustees, §§97-11-11, 97-11-13.

BRIDGES.
Levees, §§97-15-21 to 97-15-27.
Nuisances.
  Failure to keep road, etc., in repair, §97-15-51.
Obstructing, injuring, etc., §97-15-33.
Vandalism, §97-15-1.
  Juvenile offenders, §97-15-1.

BROADCASTING.
Obscenity exemption, §97-29-107.

BROADCASTING —Cont'd
Theft of telecommunication services, §97-25-54.

BRODERICK RASHAD DANTI DIXON ACT.
False reporting of crime, §97-35-47.

BUGGERY, §97-29-59.

BURDEN OF PROOF.
Alcoholic beverage offenses.
  Burden of establishing defense, §97-31-33.
Forfeitures.
  Trademarks and recordings violations.
    Civil forfeiture.
      Petition for forfeiture, §97-21-103.
Racketeer influenced and corrupt organizations.
  Seizure and forfeiture of property, §97-43-11.
Trademarks and recordings violations.
  Civil forfeiture.
    Petition for forfeiture, §97-21-103.

BURGLARY, §§97-17-17 to 97-17-37.
Boats and other watercraft, §97-17-33.
Breaking and entering building other than dwelling, §97-17-33.
Breaking inner door of dwelling by one lawfully on premises, §97-17-29.
Breaking out of dwelling, §97-17-25.
Dwelling house, defined, §97-17-31.
Home invasion, §97-17-23.
Inhabited dwelling, §97-17-23.
Motor vehicles, §97-17-33.
Nighttime breaking while armed with deadly weapon, §97-17-23.
Possession of burglar's tools, §97-17-35.
Railroad cars, §97-17-33.
RICO, §§97-43-1 to 97-43-11.
Safecracking, §97-17-37.
Use of explosives, §97-17-37.

BURGLARY TOOLS.
Possession of burglar's tools, §97-17-35.

C

CABLE TELEVISION.
Obscenity exemption, §97-29-107.

CABLE TELEVISION —Cont'd

Theft of telecommunication services, §97-25-54.

CANALS.

Obstructing, injuring, etc., §§97-15-39, 97-15-41.

CAP PISTOLS.

Sales permissible, §97-37-33.

CAR RENTALS.

Theft under lease or rental agreement, §97-17-64.

CARRYING FIREARMS OR OTHER WEAPONS.

Church protection act.
- Security program to allow persons to carry firearms in church for protection of congregation.
  - Defense against charge of carrying deadly weapon, §97-37-9.

Concealed, §97-37-1.

Persons authorized to carry, permit, bond, §97-37-7.

CASINO MARKERS.

Markers treated as bad checks.
- Definitions, §97-19-55.
- Restitution and service charges, §97-19-75.

CASINOS.

Gambling generally, §§97-33-1 to 97-33-49.

CATALYTIC CONVERTERS.

Scrap metal dealers.
- Metal property purchase transactions generally, §§97-17-71 to 97-17-71.2.

CATCH.

Intentionally conducting fight between canine and hog, §97-41-18.

CATS.

Adequate shelter, food, water.
- Depriving, §97-41-16.

Carrying or confining in cruel manner, §97-41-16.

Cruelty to animals.
- Generally, §§97-41-1 to 97-41-23.
- Mississippi dog and cat protection law of 2011, §97-41-16.

Euthanizing.
- Injured, diseased animals, §97-41-3.

Forfeiture of animal involved in cruelty offense to state, §97-41-16.

CATS —Cont'd

Mississippi dog and cat protection law of 2011, §97-41-16.

Torture, mutilate, burn, starve, disfigure, §97-41-16.

Wounding, §97-41-16.

CEASE AND DESIST ORDERS.

Scrap metal dealers.
- Registration violations, §97-17-71.1.

CELL PHONES.

Wrongful access to telecommunications messages by cellular phone, §97-25-49.

CEMETERIES.

Desecration, §97-29-25.

Vandalism, §97-17-39.

CERTIFICATES OF DEPOSIT.

Computer crimes.
- Financial instrument, defined, §97-45-1.

Forgery and counterfeiting.
- Unlawful possession of plate, §97-21-23.

Laundering of monetary instruments, §97-23-101.

CHANCERY COURTS.

Scrap metal dealers.
- Appeal of final order of secretary of state.
  - Registration violations, §97-17-71.1.

CHECKS.

Bad checks.
- Generally, §§97-19-55 to 97-19-81.

Metal property purchases.
- Scrap metal dealers or other purchasers.
  - Required method of payment, §97-17-71.

Scrap metal dealers or other purchasers.
- Metal property purchases.
  - Required method of payment, §97-17-71.

CHEWING TOBACCO.

Tobacco sales to underage persons.
- General provisions, §§97-32-1 to 97-32-23.

CHILD ABUSE AND NEGLECT.

False reporting, §97-35-47.

Reports.
- False reporting, §97-35-47.

CHILD LABOR.
Enticing away minor without written consent, §97-23-29.

CHILDREN AND MINORS.
Cigarettes and tobacco products.
  Alternative nicotine products.
    Distribution of alternative nicotine products to underage persons, §97-32-51.
      Educational property, sale or furnishing to underage person near, §97-32-52.
Firearms and other weapons.
  Minors, §§97-37-13 to 97-37-17.
Gambling with minor, §§97-33-21, 97-33-23.
Glue sniffing, §97-27-33.
Lotteries.
  Gambling with minor, applicability to lotteries, §§97-33-21, 97-33-23.
Metal property.
  Scrap metal dealers or other purchasers.
    Purchasing from person younger than 18 years.
      Unlawful, §97-17-71.
Peeping or spying on child under 16 years of age, §97-29-61.
  Photographing or filming without permission, §97-29-63.
Poisons.
  Unlawful sales to minors, §§97-27-31, 97-27-33.
Prostitution.
  Minor taken into custody for prostitution.
    Reporting by law enforcement officer, §97-29-49.
  Procurement of services of minor, §97-29-51.
  Promoting prostitution by minor, §97-29-51.
Scrap metal dealers or other purchasers.
  Metal property.
    Purchasing from person younger than 18 years.
      Unlawful, §97-17-71.
Tobacco sales to underage persons, §§97-32-1 to 97-32-23.
Vandalism.
  Highway signs and signals.
    Civil liability of parents, §97-15-1.

CHILDREN AND MINORS —Cont'd
Voyeurism.
  Peeping or spying on child under 16 years of age, §97-29-61.
  Photographing or filming child under 16 years of age, §97-29-63.

CHILDREN BORN OUT OF WEDLOCK.
Criminal liability.
  Second or subsequent illegitimate child, §97-29-11.

CHURCHES AND OTHER PLACES OF WORSHIP.
Alcoholic beverages.
  Exception to prohibition, §97-31-33.
Arson, §97-17-3.
Disturbance of worship service, §97-35-17.
Firearms and other weapons.
  Church protection act.
    Security program to allow persons to carry firearms in church for protection of congregation.
      Defense against charge of carrying deadly weapon, §97-37-9.
Grand larceny, §97-17-41.
Mississippi church protection act.
  Security program to allow persons to carry firearms in church for protection of congregation.
    Defense against charge of carrying deadly weapon, §97-37-9.
Petit larceny, §97-17-43.
Strip clubs.
  Location within certain distance of church, §97-29-65.
Theft of property from place of worship.
  Grand larceny, §97-17-41.
Vandalism, §97-17-39.

CIGARETTES AND TOBACCO PRODUCTS.
Alternative nicotine products.
  Distribution of alternative nicotine products to underage persons, §97-32-51.
    Educational property, sale or furnishing to underage person near, §97-32-52.
Educational property.
  Adult tobacco use on educational property, §§97-32-25 to 97-32-29.

CIGARETTES AND TOBACCO PRODUCTS —Cont'd
Electronic cigarettes.
  Distribution of alternative nicotine products to underage persons, §97-32-51.
    Educational property, sale or furnishing to underage person near, §97-32-52.
Littering highways and private property with trash likely to cause fire, §97-15-29.
School property.
  Adult tobacco use on educational property, §§97-32-25 to 97-32-29.
    Citation of act, §97-32-25.
    Definitions, §97-32-27.
    Fines, §97-32-29.
    Prohibited acts, §97-32-29.
    Title of act, §97-32-25.
Smoking.
  Adult tobacco use on educational property, §§97-32-25 to 97-32-29.
  Public transportation, §97-35-1.
Tobacco sales to underage persons, §§97-32-1 to 97-32-23.
Underage persons, sale or distribution to, §§97-32-1 to 97-32-23.
  Alternative nicotine products, §97-32-51.
    Educational property, sale or furnishing to underage person near, §97-32-52.
  Citation of title, §97-32-1.
  Citations, §97-32-5.
  Confidentiality of information.
    Juvenile offenders, §97-32-23.
  Construction of act, §97-32-2.
  Consumption of tobacco, §97-32-9.
  Defenses.
    Absolute affirmative defense, §97-32-5.
  Definitions, §97-32-3.
  Habitual offenders, §97-32-5.
  Inspections.
    Juvenile monitoring compliance programs, §97-32-5.
    Unannounced inspections, §97-32-21.
  Legislative intent, §97-32-2.
  Misrepresentation of age, §97-32-13.
  Monitoring programs, §97-32-5.
  Penalties, §97-32-5.
  Photographic identification.
    Failure to request and examine, §97-32-5.

CIGARETTES AND TOBACCO PRODUCTS —Cont'd
Underage persons, sale or distribution to —Cont'd
  Point of sale warning signs, §97-32-11.
  Possession of tobacco, §97-32-9.
  Prohibited conduct, §97-32-5.
  Purchase prohibited, §97-32-9.
  Reporting requirements, §97-32-5.
  Retailer tobacco education program.
    Defined, §97-32-3.
    Enrollment for second violation, §97-32-5.
  Retail sales clerks.
    Notification and agreement, §97-32-7.
    Photographic identification.
      Failure to request and examine, §97-32-5.
  Retail sales permits, §97-32-19.
    Disciplinary action, §97-32-17.
    Disciplinary action for habitual violations, §97-32-5.
  Unannounced inspections, §97-32-21.
  Unsealed tobacco products, §97-32-17.
  Vending machine tobacco sales.
    Location restrictions, §97-32-15.
  Warning signs.
    Signs at point of sale, §97-32-11.

CIRCUIT COURTS.
Felony dumping of solid wastes.
  Subject-matter jurisdiction, §97-15-30.
Piracy of recordings.
  Private causes of action, §97-23-91.
Racketeer influenced and corrupt organizations.
  Civil proceedings, §97-43-9.

CLERGY.
Alcoholic beverage exception to prohibition, §97-31-33.

CLERKS OF COURT.
Extortion.
  Collecting unauthorized fees, §97-11-33.

CLUBS.
Strip clubs.
  Location within certain distance of church, school, kindergarten or courthouse, §97-29-65.

COCKFIGHTING, §97-41-11.

CODE OF MILITARY JUSTICE.
Commissioned officers.
  Resigning to evade obedience to lawful order, §97-11-39.

CODE OF MILITARY JUSTICE —Cont'd
Election offenses.
Armed troops brought near election place, §97-13-29.

COERCION.
Preventing lawful conduct of business, §97-23-83.

COHABITATION.
Adultery, §97-29-1.
Going out of state to marry, §97-29-9.
Fornication, §97-29-1.
Incestuous marriage, §97-29-5.
Marriage under false pretense.
Effect on cohabitation on indictment, §97-19-33.
Persons divorced for incest, §97-29-29.

COIN-OPERATED MACHINES.
Forgery of slug, token or other device, §97-21-11.
Larceny therefrom, §97-17-68.
Tobacco sales to underage persons.
Restricted access, §97-32-15.

COINS.
Counterfeiting.
Uttering counterfeit coin, §97-21-59.

COLLEGES AND UNIVERSITIES.
Firearms and other weapons.
Possession of weapons by students, §97-37-17.
Ticket scalping, §97-23-97.

COLONIAL DAMES.
Unauthorized use of membership buttons, insignia, etc., §97-19-43.

COMMUNICABLE DISEASES.
Criminal exposure of another to certain diseases, §97-27-14.
Endangerment by bodily substance, §97-27-14.
Importation to spread by inoculation, §97-27-11.
Medical certification to travel abroad.
Smallpox patient, §97-27-13.

COMMUNITY AND JUNIOR COLLEGES.
Firearms and other weapons.
Possession of weapons by students, §97-37-17.

COMMUNITY SERVICE.
Cigarettes and tobacco products.
Possession of tobacco product by underage person when in violation of another statute, §97-32-9.
Tobacco sales to underage persons.
Misrepresentation of age, §97-32-13.

COMPANY GUARDS.
Persons permitted to carry firearm or other weapon, §97-37-7.

COMPLAINTS.
Bad check restitution, §§97-19-75, 97-19-79.
Street gangs.
Civil proceedings, §97-44-7.

COMPUTER CRIMES, §§97-45-1 to 97-45-33.
Computer equipment.
Offenses against, §97-45-7.
Computer fraud, §97-45-3.
Computer users.
Offenses against, §97-45-5.
Costs assessed against convicted defendant, §97-45-25.
Cyberstalking, §97-45-15.
Definitions, §§97-45-1, 97-45-2.
Dual prosecution, §97-45-13.
Expenses of cyber crime central or special fund programs.
Defrayed by appropriations, §97-45-25.
Identity theft, §97-45-19.
Intellectual property.
Offenses against, §97-45-9.
Investigations, §97-45-23.
Costs assessed against convicted defendant, §97-45-25.
Jurisdiction.
Criminal action, §97-45-21.
Obscene communications, §97-29-45.
Online impersonation, §97-45-33.
Posting of messages through electronic media.
Purpose of causing injury to person, §97-45-17.
Prosecutions, §97-45-23.
Venue, §97-45-11.

COMPUTER FRAUD, §97-45-3.
Organized theft or fraud enterprise, §97-43-3.1.

COMPUTERS AND SOFTWARE.
Computer fraud, §97-45-3.
Crimes, §§97-45-1 to 97-45-33.

COMPUTERS AND SOFTWARE —Cont'd
Critical infrastructure trespass or impeding critical infrastructure, §97-25-59.
Sales tax.
  Falsification of sales records.
    Automated sales suppression devices, zappers and phantom-ware programs, §97-23-111.

CONCEALED FIREARMS OR OTHER WEAPONS.
Carrying, §97-37-1.

CONCEALING MERCHANDISE.
Shoplifting, §§97-23-93 to 97-23-96.

CONCEALMENT OF PROPERTY.
Shoplifting, §§97-23-93 to 97-23-96.

CONFEDERATE VETERANS.
Unauthorized use of membership buttons, insignia, etc., §97-19-43.

CONFESSION OF JUDGMENT.
Personating another to confess judgment, §97-19-33.

CONFIDENTIALITY OF INFORMATION.
Felon registration.
  No public inspection of information, §97-35-27.
Tobacco sales to underage persons.
  Juvenile offenders, §97-32-23.

CONFLICTS OF INTEREST.
Bingo.
  Overlapping financial interest, §97-33-81.
Gaming commission, §97-33-105.

CONSERVATION OFFICERS.
Firearms or other weapons.
  Persons permitted to carry, §97-37-7.

CONSIGNED MOTOR FUEL.
Larceny, §§97-17-201 to 97-17-207.

CONSPIRACY.
Criminal street gangs, §§97-44-1 to 97-44-19.
Highway contractors.
  Collusion to raise prices, §97-15-11.
  Conspiracy to violate contracts and defraud state, §97-15-5.
Labor and employment relations.
  Preventing employment by force or violence, §97-23-41.

CONSPIRACY —Cont'd
Racketeer influenced and corrupt organizations, §§97-43-1 to 97-43-11.
Restraint of trade.
  Unlawful boycott, §97-23-85.
Solid wastes.
  Unauthorized dumping, §97-15-30.
Theft of telecommunication services, §97-25-54.
Trespass.
  Entry on premises where dangerous devices are manufactured, etc., §97-17-95.

CONSTABLES.
Extortion.
  Collecting unauthorized fees, §97-11-33.
Purposeful avoidance of knowledge of offense, §97-11-35.

CONSUMER PROTECTION.
Bad check fees.
  Lenders and retailers, §97-19-81.

CONTAINERS.
Beaches.
  Breakable containers or injurious debris, §97-27-9.

CONTRABAND.
Explosives.
  Duty of law enforcement officers, §97-37-23.
Gambling devices, §97-33-7.
Piracy of recordings.
  Confiscation of illegal recordings, §97-23-91.
Sales tax.
  Falsification of sales records.
    Automated sales suppression devices, zappers and phantom-ware programs, §97-23-111.

CONTRACTORS.
Highway contractors.
  Collusion to raise prices, §97-15-11.
  Conspiracy to violate contracts and defraud state, §97-15-5.

CONTRACTS.
Bad checks.
  Restitution agreements, §97-19-77.
Charitable bingo.
  Commercial lessors, §§97-33-201, 97-33-203.

CONVERSION OF PROPERTY.
Criminal conversion, §97-17-61.
Rental property, §97-17-62.

CONVICTION.
Permit to carry firearms or other weapons.
  Issuance prohibited, §97-37-7.
Scrap metal dealers.
  Registration with secretary of state.
    Prohibition, §97-17-71.1.

COPPER.
Copper property.
  Defined, §97-17-71.
Scrap metal dealers.
  Purchase transactions, §§97-17-71 to 97-17-71.2.

CORONERS.
Firearms and other weapons.
  Carrying, §97-37-7.

CORPORATIONS.
Embezzlement.
  Officers, employees or agents, §97-23-19.
Forgery, §97-21-3.
  Corporate evidences of debt signed by pretended officer, §§97-21-19, 97-21-49.
  Corporate seal or its impression, §97-21-47.
Nuisances.
  Failure to keep road, etc., in repair, §97-15-51.
Prostitution.
  Promoting prostitution.
    Punishment for corporations, partnerships, etc, §97-29-51.

CORRECTIONAL OFFICERS.
Diseases, criminal exposure to, §97-27-14.
Sale, possession, etc., of alcoholic beverages, §97-31-35.

CORRUPTION.
RICO, §§97-43-1 to 97-43-11.

CORRUPT ORGANIZATIONS.
RICO, §§97-43-1 to 97-43-11.

COSTS.
Scrap metal dealers or other purchasers.
  Metal property purchases.
    Person selling stolen property to dealer or purchaser, §97-17-71.

COTTON.
Adulterated cottonseed meal.
  Unbranded adulterated cottonseed meal, §97-23-15.
Fraudulent packing, §97-23-7.
Scalage, §§97-23-11, 97-23-13.
Seed-cotton, §97-23-9.
  Warehouses.
    Fireworks, §97-37-27.

COTTONSEED.
Adulterated cottonseed meal.
  Unbranded adulterated cottonseed meal, §97-23-15.
Seed-cotton, §97-23-9.
Warehouses, fireworks, §97-37-27.

COTTON WAREHOUSES.
Fireworks.
  Unlawful to explode, §97-37-27.

COTTON-YARDS.
Fireworks.
  Unlawful to explode, §97-37-27.

COUNTERFEITING.
Acknowledgments.
  Certificate of acknowledgment or proof of recordable instrument, §§97-21-35, 97-21-63.
Bank notes, §§97-21-37, 97-21-49.
Corporate evidences of debt signed by pretend officer, §§97-21-19, 97-21-49.
Corporate seals or their impressions, §97-21-47.
Court papers and pleadings, §97-21-35.
Currency or treasury notes of United States, §§97-21-13 to 97-21-17.
  Possession with intent to utter, §97-21-17.
  Uttering counterfeit currency, §§97-21-33, 97-21-59.
Deeds, §§97-21-35, 97-21-63.
Foreign currency, §97-21-15.
Government seals or their impressions, §97-21-47.
Licenses, §97-21-35.
Negotiable instruments, §§97-21-37, 97-21-49.
Possession of dies, plates, etc.
  Intent to market imitation goods, §97-21-55.
Railroad tickets, §§97-21-39 to 97-21-43.
RICO, §§97-43-1 to 97-43-11.

COUNTERFEITING —Cont'd
Social security cards, §97-19-85.
State seals or their impressions, §97-21-47.
Stock and public securities, §§97-21-9, 97-21-49.
Summons and process, §97-21-35.
Tokens or slugs, §97-21-11.
Trademarks, §§97-21-53 to 97-21-57.
Uttering counterfeit instrument or coin, §97-21-59.
Wills, §§97-21-35, 97-21-63.
Written instruments, §§97-21-35, 97-21-63.

COUNTIES.
Metal property purchases.
  Ordinances, authority to enact, §97-17-71.
Scrap metal dealers or other purchasers.
  Metal property purchases.
    Ordinances, authority to enact, §97-17-71.

COURTHOUSES.
Firearms and other weapons.
  Persons authorized to carry in, courtrooms excepted, §97-37-7.

COURTS.
Firearms and other weapons.
  Persons authorized to carry in courthouses, exception courtrooms, §97-37-7.
Strip clubs.
  Location within certain distance of courthouse, §97-29-65.

COURTS-MARTIAL.
Commissioned officers.
  Resigning to evade obedience to lawful order, §97-11-39.

CREDIT CARD FORGERY, §§97-19-17, 97-19-29.

CREDIT CARD FRAUD, §§97-19-5 to 97-19-31.

CREDIT CARDS.
Anti-skimming provision.
  Using scanner or reencoder to capture information, §§97-19-32, 97-45-31.
Credit card fraud, §§97-19-5 to 97-19-31.
Forgery, §§97-19-17, 97-19-29.

CREDIT CARDS —Cont'd
Fraud, §§97-19-5 to 97-19-31.
  Acquisition by theft or artifice, §97-19-13.
  Anti-skimming provision.
    Using scanner or reencoder to capture information, §§97-19-32, 97-45-31.
  ATM card.
    Use with intent to defraud, §97-19-21.
  Citation of act, §97-19-5.
  Construction of act, §97-19-7.
  Controlling card as security for debt, §97-19-15.
  Definitions, §97-19-9.
  Dual prosecution for other crimes, §97-19-7.
  Expired credit cards or devices.
    Use for fraudulent purposes, §97-19-31.
  False representation to obtain credit card, §97-19-85.
  Forgery, §§97-19-17, 97-19-29.
    Furnishing things of value on forged or unlawfully obtained card, §97-19-23.
  Fraudulent use of credit or debit card numbers, §97-19-85.
  Penalties, §97-19-29.
  Possession of incomplete cards or devices for counterfeiting, §97-19-25.
  Procuring issuance by false statements, §97-19-11.
  Receipt of cards issued in another's name, §97-19-13.
  Receipt of things of value in violation of act, §97-19-27.
  Signing with intent to defraud, §97-19-19.
  Unlawful sales and purchases, §97-19-13.
  Using scanner or reencoder to capture information, §§97-19-32, 97-45-31.
Organized theft or fraud enterprise, §97-43-3.1.
Possession of incomplete cards or devices for reproduction, §§97-19-25, 97-19-29.
Theft, §§97-19-13, 97-19-29.
Using scanner or reencoder to capture information, §§97-19-32, 97-45-31.

CREDIT CARD THEFT, §§97-19-13, 97-19-29.
Using scanner or reencoder to capture information, §§97-19-32, 97-45-31.

CRIMES.
Adulterated and misbranded food, §97-27-1.
Adultery and fornication, §§97-29-1 to 97-29-9.
Advertising.
  False advertising, §§97-23-1 to 97-23-5.
Agriculture.
  Liens.
    Removing products from premises subject to lien, §97-17-73.
Air conditioner evaporator coils or condensers.
  Sales for scrap violations, §97-17-71.2.
Aircraft.
  Piracy, §97-25-55.
Alcoholic beverages.
  General provisions, §§97-31-5 to 97-31-55.
Arson, §§97-17-1 to 97-17-14.
Attorney general.
  Counseling or defending criminal defendants, §97-11-3.
Bad checks.
  General provisions, §§97-19-55 to 97-19-81.
Beaches.
  Leaving breakable containers or injurious debris upon established beach, §97-27-9.
  Littering.
    Breakable containers or injurious debris, §97-27-9.
Bigamy, §§97-29-13 to 97-29-17.
Bingo.
  Charitable bingo, §§97-33-50 to 97-33-203.
Bonds, surety.
  Approving worthless official bond, §97-11-9.
Boundary landmarks.
  Altering or destroying, §97-17-15.
Brands and marks.
  Saw-logs.
    Altering or defacing, §97-17-17.
Bridges.
  Obstructing, injuring, etc., §97-15-33.
Burglary.
  General provisions, §§97-13-19 to 97-13-37.

CRIMES —Cont'd
Cemeteries.
  Desecration of.
    Burial site, §97-29-25.
Charitable bingo.
  General provisions, §§97-33-50 to 97-33-203.
Children and minors.
  Photographing or filming child under 16 years of age, §97-29-63.
  Spying on child under 16 years of age, §97-29-61.
Circuit court clerks.
  Certificate of appeal.
    Failure or refusal to send up, §97-11-15.
  Certified copies of papers.
    Refusal to give, §97-11-13.
Computer crimes and identity theft.
  Generally, §§97-45-1 to 97-45-33.
Contagious diseases, §§97-27-11, 97-27-13, 97-27-14.
Cotton, §§97-23-7 to 97-23-15.
Credit cards.
  Fraud, §§97-19-5 to 97-19-31.
  Using scanner or reencoder to capture information, §§97-19-32, 97-45-31.
Critical infrastructure trespass or impeding critical infrastructure, §97-25-59.
Cruelty to animals.
  General provisions, §§97-41-1 to 97-41-23.
Dead bodies, §§97-29-19 to 97-29-23.
Diseases.
  Exposure of another to certain diseases, §97-27-14.
  Introduction of harmful substances, §97-27-12.
Disorderly conduct, §§97-35-1 to 97-35-7.
District attorneys.
  Counseling or defending criminal defendants, §97-11-3.
Disturbances, §§97-35-9 to 97-35-18.
Dog and cat protection law of 2011, §97-41-16.
Drunkenness in office, §97-11-23.
Dueling, §§97-39-1 to 97-39-11.
Dumping dead wildlife or wildlife parts on highways or private property, §97-15-32.
Elected officials.
  Exercising duties without oath of office or giving bond, §97-11-41.

CRIMES —Cont'd
Electric power lines and facilities, §97-25-1.
Emergency assistance.
  Obstructing access to, §97-35-51.
Endangerment by bodily substance, §97-27-14.
Failure to return known offenders, §97-11-35.
False fire alarm, §97-35-45.
False pretenses.
  General provisions, §§97-19-39 to 97-19-53.
False reporting of crime, §97-35-47.
Ferries.
  Obstructing, injuring, etc., §97-15-33.
Firearms and other weapons.
  Generally, §§97-37-1 to 97-37-37.
  Honesty in purchasing firearms act.
    Transfer of firearm in violation of law, soliciting, enticing or encouraging, §97-37-105.
  Silencers on firearms, §97-37-31.
Food sales, §§97-27-15 to 97-27-19.
Fornication, §§97-29-1 to 97-29-9.
Gambling.
  Charitable bingo, §§97-33-50 to 97-33-203.
  General provisions, §§97-33-1 to 97-33-49.
  Lotteries, §§97-33-31 to 97-33-49.
Highways.
  Dead wildlife or wildlife parts.
    Dumping on highways, §97-15-32.
  Highway commission members, §§97-15-3, 97-15-5.
  Highway contractors, §§97-15-5, 97-15-11.
  Hunting or shooting across streets and highways, §97-15-13.
  Littering, §97-15-29.
    Tacks, glass or other damaging objects, §97-15-31.
  Obstructing or injuring.
    Plank-road or covered road, §97-15-35.
  Obstructing public highway, §97-15-37.
  Obstructing public streets, etc., §§97-35-23, 97-35-25.
  Road oversee, §§97-15-47, 97-15-49.
  Traffic control devices, §§97-15-1, 97-15-13.
  Vandalism of highway signals or signs, §§97-15-1, 97-15-13.

CRIMES —Cont'd
Hijacking aircraft, §97-25-55.
Home invasion, §97-17-23.
Home repair fraud, §97-23-103.
Hunting.
  Highways.
    Hunting or shooting near, §97-15-13.
  Streets or highways, hunting or shooting near, §97-15-13.
Hydraulic brake fluid.
  Sale of inferior quality, §97-35-19.
Identity theft, §97-45-19.
  Crimes chargeable, §97-45-29.
Incest, §§97-29-27, 97-29-29.
Incestuous fornication, §§97-29-5, 97-29-29.
Incestuous marriages, §97-29-27.
Indecent exposure, §97-29-31.
Keeper of ferry, toll-bridge or causeway, §§97-15-15 to 97-15-19.
Labor and employment relations.
  Mass picketing by union obstructing or interfering with right of access to business or residence, §97-23-109.
Larceny.
  General provisions, §§97-17-41 to 97-17-65.
Laser.
  Focusing laser at public safety and emergency personnel, §97-35-49.
Levees, §§97-15-21 to 97-15-27.
Liens.
  Removing personal property subject to lien, §§97-17-75, 97-17-77.
Lighthouses.
  Destroying, etc., property, §97-35-21.
Littering highways and private property, §97-15-29.
Livestock and animal diseases, §§97-27-3 to 97-27-7.
Lotteries.
  Gambling with minor, applicability to lotteries, §§97-33-21, 97-33-23.
  General provisions, §§97-33-31 to 97-33-49.
Mail fraud, §97-19-83.
Malicious mischief, §§97-17-39, 97-17-67.
Metal property.
  Scrap metal dealers or other purchasers.
    Purchase or sales violations, §97-17-71.
Mississippi dog and cat protection law of 2011, §97-41-16.

CRIMES —Cont'd
Money laundering, §97-23-101.
Mortgages.
  Residential mortgage fraud, §97-23-107.
Motion pictures.
  Operating unauthorized audiovisual recording device, §97-23-92.
Motor fuels.
  Larceny of consigned motor fuel, §§97-17-201 to 97-17-207.
Natural parent of illegitimate child.
  Multiple births, §97-29-11.
Navigation lights.
  Extinguishing, etc., §97-35-21.
Newspapers and periodicals.
  Editorial staff.
    Failure to print names in publication, §97-23-35.
Nuclear sabotage, §97-25-57.
Obscenity, §§97-29-101 to 97-29-109.
Obstructing access to emergency assistance, §97-35-51.
Oleomargarine and other imitation food.
  Labeling violation, §97-23-37.
Online impersonation, §97-45-33.
Organized theft or fraud enterprise, §97-43-3.1.
Peeping Tom law, §97-29-61.
  Photographing or filming another without permission, §97-29-63.
Personal property.
  Removing property subject to lien, §§97-17-75, 97-17-77.
Photographing or filming another without permission where there is expectation of privacy, §97-29-63.
Picketing.
  Mass picketing by union obstructing or interfering with right of access to business or residence, §97-23-109.
Piracy of recordings, §§97-23-87 to 97-23-92.
Polygamy.
  Teaching of, §97-29-43.
Private property.
  Dead wildlife or wildlife parts.
    Dumping on private property, §97-15-32.
  Littering with trash likely to cause fire, §97-15-29.
Professions and occupations.
  Unlicensed practice, §97-23-43.

CRIMES —Cont'd
Public contracts.
  Offering inducements to influence award, §97-11-53.
Public drunkenness, §97-29-47.
Public officers and employees.
  Reduced fare and free pass violations, §97-11-43.
Public profanity, §§97-29-45, 97-29-47.
Public records.
  Alteration of records, §97-11-1.
Public utilities.
  Critical infrastructure trespass or impeding critical infrastructure, §97-25-59.
Purposeful avoidance of knowledge of offense, §97-11-35.
Racketeer influenced and corrupt organizations, §§97-43-1 to 97-43-11.
Radiation.
  Introduction of harmful substances, §97-27-12.
Raffles, §97-33-49.
Railroad tickets.
  Falsely making, altering, counterfeiting or forging, §§97-21-39 to 97-21-43.
Receiving stolen property, §97-17-70.
Record and tape piracy, §§97-23-87 to 97-23-92.
Registration of convicted felons.
  Failure to register, §97-35-27.
Rental storage batteries, §§97-23-55 to 97-23-61.
Residential mortgage fraud, §97-23-107.
Restraint of trade.
  Threats or coercion to prevent lawful conduct of business, §97-23-83.
  Unlawful boycott, §97-23-85.
Retail employees.
  Giving away merchandise without consent of merchant, §97-23-99.
Retail sales receipts.
  Falsely using or producing, §97-23-105.
Sales tax.
  Falsification of sales records.
    Automated sales suppression devices, zappers and phantom-ware programs, §97-23-111.

CRIMES —Cont'd
Scrap metal dealers or other purchasers.
  Air conditioner evaporator coils or condensers.
    Sales for scrap violations, §97-17-71.2.
  Metal property.
    Purchase or sales violations, §97-17-71.
  Registration by scrap metal dealers.
    Violation, §97-17-71.1.
Seduction, §97-29-55.
Shooting into dwelling house, §97-37-29.
Shooting near dwelling house.
  Causing damage to property, domesticated animal or livestock, §97-37-30.
Shoplifting, §§97-23-93 to 97-23-96.
Sodomy, §97-29-59.
Solid wastes.
  Unauthorized dumping, §97-15-30.
Stallion or jack.
  Running at large, §97-29-57.
Storage batteries, §§97-23-55 to 97-23-61.
Street gangs, §§97-44-1 to 97-44-19.
Strip clubs.
  Location within certain distance of church, school, kindergarten, or courthouse, §97-29-65.
Tax collectors.
  Collecting privilege tax without issuing license, §97-11-49.
  Failure to complete duplicate tax receipts, §97-11-45.
  Failure to make settlement, §97-11-47.
Telephones and telegraphs, §§97-25-49 to 97-25-54.
Terrorism.
  Introduction of harmful substances, §97-27-12.
Theft of telecommunication services, §97-25-54.
Ticket scalping, §97-23-97.
Tobacco sales to underage persons.
  General provisions, §§97-32-1 to 97-32-23.
Trespass.
  General provisions, §§97-17-85 to 97-17-103.
Trusts and trustees.
  Trustees of state institutions.
    Incurring liability in excess of income, §97-11-51.

CRIMES —Cont'd
Universal product codes.
  Falsely using or producing, §97-23-105.
Unnatural intercourse, §97-29-59.
Voyeurism, §97-29-61.
  Photographing or filming another without permission, §97-29-63.
Waterways.
  Obstructing, §§97-15-39 to 97-15-45.
Weapons of mass destruction.
  False reports of placing, §97-37-21.
  Unlawful use, §97-37-25.
Wire fraud, §97-19-83.

CRIMES AGAINST NATURE, §97-29-59.

CRIME SOLVERS' REWARDS.
Felony dumping of solid wastes, §97-15-30.

CRIMINAL CONVERSION, §97-17-61.

CRIMINAL ENTERPRISES.
RICO, §§97-43-1 to 97-43-11.
Street gangs, §§97-44-1 to 97-44-19.

CRIMINAL FORFEITURES.
Aircraft.
  First degree arson, §97-17-3.
Arson.
  First degree arson.
    Burning dwelling house or outbuilding, §97-17-1.
    Places of worship, §97-17-3.
  Property used in commission of arson, §97-17-4.
Cruelty to animals.
  Permanent forfeiture to animal control agency, §97-41-2.
Gambling.
  Money and appliances, §§97-33-17, 97-33-19.
Motor vehicles.
  First degree arson, §97-17-4.
Racketeer influenced and corrupt organizations.
  Civil forfeiture of property, §§97-43-9, 97-43-11.
Recordings violations.
  Civil forfeiture proceedings, §§97-21-101, 97-21-103.
    Property subject to forfeiture, §97-23-89.
Solid wastes.
  Unauthorized dumping, §97-15-30.

CRIMINAL FORFEITURES —Cont'd
Trademarks.
  Counterfeiting or forging.
    Civil forfeiture proceedings, §§97-21-101, 97-21-103.
    Property subject to, §97-21-53.
      Dies, plates, printed labels, §97-21-55.

CRIMINAL HISTORY RECORD CHECKS.
Fantasy contests.
  Licensure of operators offering contests within state, §97-33-307.
Firearms and other weapons.
  Permit to carry, §97-37-7.
Scrap metal dealers, §97-17-71.1.

CRIMINAL STREET GANGS, §§97-44-1 to 97-44-19.

CRUELTY TO ANIMALS, §§97-41-1 to 97-41-23.
Carrying animal in a cruel manner, §97-41-5.
  Dogs and cats, §97-41-16.
Catch.
  Intentionally conducting fight between canine and hog, §97-41-18.
Cats.
  Euthanizing.
    Injured, diseased animals, §97-41-3.
  Mississippi dog and cat protection law of 2011, §97-41-16.
Cockfighting, §97-41-11.
Conduct constituting, §97-41-1.
  Dog and cat protection law, §97-41-16.
Confining animals without food or water, §97-41-7.
  Dogs and cats, §97-41-16.
Custodial fitness of owner, §97-41-2.
Dog fights, §97-41-19.
  Intentionally conducting fight between canine and hog, §97-41-18.
Dogs.
  Euthanizing.
    Injured, diseased animals, §97-41-3.
  Harassment of guide, leader, hearing, service or support dogs, §97-41-21.
  Mississippi dog and cat protection law of 2011, §97-41-16.
Euthanizing animals, §97-41-19.
  Injured, diseased animals, §97-41-3.

CRUELTY TO ANIMALS —Cont'd
Failure to provide sustenance, §97-41-9.
  Dogs and cats, §97-41-16.
Fighting animals or cocks, §§97-41-11, 97-41-19.
  Intentionally conducting fight between canine and hog, §97-41-18.
Forfeiture of animal involved in cruelty offense to state, §97-41-16.
Guide, leader, hearing, service or support dogs.
  Assaulting, beating, harassing, injuring, impeding, interfering with, §97-41-21.
Immunity.
  Euthanizing injured, diseased animals.
    Acting in good faith, §97-41-3.
Injured or diseased animals.
  Authority to kill, §97-41-3.
Livestock.
  Maliciously or mischievously injuring, §97-41-15.
Mississippi dog and cat protection law of 2011, §97-41-16.
Poisoning animals, §97-41-17.
Posting requirements.
  Seizure of animals, §97-41-2.
Proceedings on seizure, §97-41-2.
Public service animals.
  Injury and killing of, §97-41-23.
Restitution, §97-41-15.
Seizure of animals, §97-41-2.
Temporary custody, §97-41-2.
Transporting animal in a cruel manner, §97-41-5.
  Dogs and cats, §97-41-16.
What constitutes cruelty, §97-41-1.
  Dog and cat protection law, §97-41-16.

CUNNILINGUS, §97-29-59.

CURRENCY.
Money laundering, §97-23-101.

CUSTOMERS.
Disorderly conduct.
  Interference with business, customers, invitees, etc., §97-35-5.
Trespass.
  Customer or patron, refusal to leave premises upon request, §97-23-17.

CYBERSTALKING, §97-45-15.

D

DAMAGES.
Advertising.
  Deceptive or misleading advertising, §97-23-3.
Arson.
  First degree arson.
    Burning dwelling house or outbuilding, §97-17-1.
    Places of worship, §97-17-3.
Bridges.
  Obstructing, injuring, etc., §97-15-33.
Child labor.
  Enticing away minor without written consent, §97-23-29.
Criminal trespass, §97-17-103.
Deceptive or misleading advertising, §97-23-3.
  Good faith exception, §97-23-3.
Dumping dead wildlife or wildlife parts on highways or private property, §97-15-32.
Explosives.
  Search and seizure by law enforcement officers, §97-37-23.
Ferries.
  Obstructing, injuring, etc., §97-15-33.
Highway commission members and employees.
  Conspiracy to violate contracts and defraud state, §97-15-5.
Highway contractors.
  Conspiracy to violate contracts and defraud state, §97-15-5.
Highways.
  Dead wildlife or wildlife parts.
    Dumping on highways, §97-15-32.
  Littering with tacks, glass or other damaging objects, §97-15-31.
  Littering with trash likely to cause fire, §97-15-29.
Labor and employment relations.
  Enticing away employee without written consent, §97-23-29.
Landlord and tenant.
  Enticing away lessee without written consent, §97-23-29.
Levees.
  Right of action for damages, §97-15-21.
Littering.
  Highways and private property likely to cause fire, §97-15-29.

DAMAGES —Cont'd
Littering —Cont'd
  Highways with tacks, glass or other damaging objects, §97-15-31.
Money laundering.
  Civil recovery, §97-23-101.
Piracy of recordings.
  Private causes of action, §97-23-91.
Racketeer influenced and corrupt organizations.
  Civil recovery of damages, §97-43-9.
Real property.
  Dead wildlife or wildlife parts.
    Dumping on private property, §97-15-32.
  Littering private property with trash likely to cause fire, §97-15-29.
Restraint of trade.
  Unlawful boycott, §97-23-85.
Shoplifting.
  Civil remedy for shoplifting violations, §97-23-96.
  Detention of suspect for questioning, §97-23-95.
Sidewalks.
  Littering with tacks, glass or other damaging objects, §97-15-31.
Stallions or jacks.
  Running at large, §97-29-57.
Street gangs.
  Punitive damages, §97-44-13.
  Unlawful use of private buildings, §97-44-15.
Streets and alleys.
  Littering with tacks, glass or other damaging objects, §97-15-31.
Treble damages.
  Arson.
    Burning dwelling house or outbuilding, §97-17-1.
    Places of worship, §97-17-3.
Trespass.
  Criminal trespass, §97-17-103.
Trusts and trustees.
  Trustees of state institutions.
    Incurring liability in excess of income, §97-11-51.
Vandalism.
  Highway signs and signals.
    Juvenile offender, §97-15-1.

DAMS AND RESERVOIRS.
Critical infrastructure trespass or impeding critical infrastructure, §97-25-59.

DATA CENTERS.
Critical infrastructure trespass or impeding critical infrastructure, §97-25-59.

DAUGHTERS OF THE AMERICAN REVOLUTION.
Unauthorized use of membership buttons, insignia, etc., §97-19-43.

DAUGHTERS OF THE CONFEDERACY.
Unauthorized use of membership buttons, insignia, etc., §97-19-43.

DEAD ANIMALS.
Food sales.
  Sale of flesh as human food, §97-27-19.
Larceny.
  Shearing wool from dead sheep, §97-17-49.

DEAD BODIES.
Buying or receiving, §97-29-21.
Desecration of cemetery, §97-29-25.
Disinterment for sale or wantonness, §97-29-19.
Opening graves for unlawful purposes, §97-29-23.

DEAF AND HEARING IMPAIRED.
False personation.
  Masquerading as deaf person, §97-19-37.
Hearing dogs.
  Harassment, §97-41-21.
Support animals.
  Harassment of hearing dogs, §97-41-21.

DEATH PENALTY.
Air piracy, §97-25-55.

DEBIT CARDS.
Insufficient funds, transactions with, §97-19-55.
  Penalties, §97-19-67.
  Prima facie evidence of identity of party drawing on account, §97-19-62.
  Returned undelivered notice as intent to defraud, §97-19-57.
    When notice not required, §97-19-61.
  Separate violation constitutes separate offense, §97-19-65.
  Statement of reason for dishonor, §97-19-63.
Organized theft or fraud enterprise, §97-43-3.1.

DECEDENTS' ESTATES.
False pretenses.
  Producing child with intent to intercept inheritance, §97-19-45.

DECEPTIVE ADVERTISING, §97-23-3.

DEEDS.
Forgery, §§97-21-7, 97-21-63.

DEFENSES.
Advertising.
  Deceptive or misleading advertising.
    Good faith exception, §97-23-3.
Alcoholic beverage offenses.
  Reliance on exceptions as defense, §97-31-33.
Bigamy, §97-29-15.
Criminal conversion.
  Good faith defense, §97-17-61.
Diseases, criminal exposure of another to, §97-27-14.
Endangerment by bodily substance, §97-27-14.
Explosives.
  Search and seizure by law enforcement officers.
    Good faith exception, §97-37-23.
Firearms and other weapons.
  Deadly weapons, §97-37-9.
  Student possession of weapons, §97-37-17.
Larceny.
  Theft under lease or rental agreement, §97-17-64.
    Affirmative defenses, §97-17-64.
Obscenity.
  Exempt profession or occupation, §97-29-107.
Shoplifting.
  Detention of suspect for questioning.
    Good faith immunity, §97-23-95.
Solid wastes.
  Unauthorized dumping, §97-15-30.
Tobacco sales to underage persons.
  Government-issued photographic identification, §97-32-5.
  Mail-order sales, §97-32-5.

DEFINED TERMS.
Access.
  Computer crimes and identity theft, §97-45-1.
Adult.
  Adult tobacco use on educational property, §97-32-27.

DEFINED TERMS —Cont'd
Alternative nicotine products.
Distribution of alternative nicotine products to underage persons, §97-32-51.
Aluminum construction materials.
Scarp metal dealers, §97-17-71.
Ammunition.
Honesty in purchasing firearms act, §97-37-103.
Animal.
Cruelty to animals, §97-41-2.
Audibly impaired.
Harassment of guide, leader, hearing, service, support dog, §97-41-21.
Audiovisual recording function.
Piracy of recordings, §97-23-92.
Automated sales suppression device.
Falsification of sales records to evade sales tax, §97-23-111.
Bingo.
Charitable bingo, §97-33-53.
Blind.
Harassment of guide, leader, hearing, service, support dog, §97-41-21.
Cardholder.
Credit card fraud, §97-19-9.
Using scanner or reencoder to capture credit card information, §§97-19-32, 97-45-31.
Cash prize.
Fantasy contests, §97-33-303.
Cemetery.
Desecration of cemetery, §97-29-25.
Charitable or nonprofit organization.
Charitable bingo, §97-33-53.
Check.
Bad checks, §97-19-55.
Commercial lessor.
Charitable bingo, §97-33-53.
Commercial purpose.
Unauthorized dumping of solid wastes, §97-15-30.
Computer.
Computer crimes and identity theft, §97-45-1.
Computer network.
Computer crimes and identity theft, §97-45-1.
Computer fraud, §97-43-3.
Computer program.
Computer crimes and identity theft, §97-45-1.
Computer services.
Computer crimes and identity theft, §97-45-1.

DEFINED TERMS —Cont'd
Computer software.
Computer crimes and identity theft, §97-45-1.
Computer system.
Computer crimes and identity theft, §97-45-1.
Concealed.
Carrying concealed deadly weapon, §97-37-1.
Conducts.
Money laundering, §97-23-101.
Confidential information.
Fantasy contests, §97-33-303.
Consideration associated with a product, service or activity other than the simulated gambling program.
Gambling, internet sweepstakes cafes, §97-33-8.
Consigned motor fuel, §97-17-201.
Contact.
Computer crimes and identity theft, §97-45-1.
Convicted.
Recovery of damages for criminal trespass, §97-17-103.
Copper materials.
Scrap metal dealers, §97-17-71.
Corrections employee.
Diseases, criminal exposure to, §97-27-14.
Course of criminal conduct.
Recovery of damages for criminal trespass, §97-17-103.
Courtroom.
Firearms or other weapons, §97-37-7.
Credible threat.
Computer crimes and identity theft, §97-45-1.
Credit.
Bad checks, §97-19-55.
Credit card.
Credit card fraud, §97-19-9.
Using scanner or reencoder to capture credit card information, §§97-19-32, 97-45-31.
Criminal streetgang.
Mississippi street gang act, §97-44-3.
Critical infrastructure facility.
Trespass on or impeding critical infrastructure, §97-25-59.
Day.
Charitable bingo, §97-33-53.
Deaf.
Harassment of guide, leader, hearing, service, support dog, §97-41-21.

DEFINED TERMS —Cont'd
Dealer.
  Tobacco sales to underage persons, §97-32-3.
Deprive.
  Theft under lease or rental agreement, §97-17-64.
Device.
  Computer crimes and identity theft, §97-45-1.
Distributor.
  Charitable bingo, §97-33-53.
Dwelling house.
  Burglary, §97-17-31.
Educational property.
  Adult tobacco use on educational property, §97-32-27.
  Student possession of weapons, §97-37-17.
Electronically converted check.
  Insufficient funds, §97-19-55.
Electronic cash register.
  Falsification of sales records to evade sales tax, §97-23-111.
Electronic cigarettes.
  Distribution of alternative nicotine products to underage persons, §97-32-51.
Electronic commercial debit.
  Insufficient funds, §97-19-55.
Electronic communication.
  Computer crimes and identity theft, §97-45-1.
Electronic mail.
  Computer crimes and identity theft, §97-45-1.
Electronic means.
  Online impersonation, §97-45-33.
Electronic video monitors.
  Gambling, internet sweepstakes cafes, §97-33-8.
Emotional distress.
  Computer crimes and identity theft, §97-45-1.
Enterprise.
  RICO, §97-43-3.
Entry fee.
  Fantasy contests, §97-33-303.
Established beach.
  Littering, §97-27-9.
Expired credit card.
  Credit card fraud, §97-19-9.
Falsely embosses.
  Credit card fraud, §97-19-9.
Falsely makes.
  Credit card fraud, §97-19-9.

DEFINED TERMS —Cont'd
Fantasy contest, §97-33-303.
Fantasy contest operator, §97-33-303.
Fantasy contest player, §97-33-303.
Fantasy contest with an entry fee, §97-33-303.
Financial institution.
  Money laundering, §97-23-101.
Financial instrument.
  Computer crimes and identity theft, §97-45-1.
Financial transaction.
  Money laundering, §97-23-101.
Financial transaction device.
  Computer crimes and identity theft, §97-45-1.
Firearm.
  Hunting or shooting near street or highway, §97-15-13.
Funeral ceremony.
  Military funeral, burial service or memorial service.
    Disturbance by disruptive protest, §97-35-18.
Funeral service.
  Military funeral, burial service or memorial service.
    Disturbance by disruptive protest, §97-35-18.
Gang.
  Street gangs, §97-44-3.
Gang member.
  Street gangs, §97-44-3.
Gang-related.
  Street gangs, §97-44-3.
Graveside service.
  Military funeral, burial service or memorial service.
    Disturbance by disruptive protest, §97-35-18.
Gross receipts.
  Charitable bingo, §97-33-53.
Handgun.
  Possession by minor, §97-37-14.
Harass.
  Harassment of guide, leader, hearing, service, support dog, §97-41-21.
Harmful biological device, §97-27-10.
Harmful biological substances, §97-27-10.
Harmful chemical device, §97-27-10.
Harmful chemical substance, §97-27-10.
Harmful radioactive device, §97-27-10.

DEFINED TERMS —Cont'd
Harmful radioactive material, §97-27-10.
Highly experienced player.
  Fantasy contests, §97-33-303.
Hog.
  Intentionally conducting fight between canine and hog, §97-41-18.
Home repair.
  Home repair fraud, §97-23-103.
Hunt.
  Hunting or shooting near street or highway, §97-15-13.
Hunting.
  Shooting or hunting near streets and highways, §97-15-13.
Identity theft, §97-45-29.
Impede.
  Critical infrastructure trespass or impeding critical infrastructure, §97-25-59.
Incomplete.
  Credit card fraud, §97-19-9.
Injure.
  Harassment of guide, leader, hearing, service, support dog, §97-41-21.
Intellectual property.
  Computer crimes and identity theft, §97-45-1.
Internet.
  Computer crimes and identity theft, §97-45-1.
Issuer.
  Credit card fraud, §97-19-9.
  Using scanner or reencoder to capture credit card information, §§97-19-32, 97-45-31.
Knowing.
  Obscenity, §97-29-101.
Knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity.
  Money laundering, §97-23-101.
Labor dispute.
  Conspiracy, §97-23-41.
Law enforcement officers.
  Scrap metal dealers, §97-17-71.
Legitimate weapon-related sports activity.
  Carrying concealed deadly weapon, §97-37-1.
Licensed dealer.
  Honesty in purchasing firearms act, §97-37-103.

DEFINED TERMS —Cont'd
Livestock.
  Stealing livestock, §97-17-53.
Loss or damage.
  Computer crimes and identity theft, §97-45-1.
Maliciously.
  Harassment of guide, leader, hearing, service, support dog, §97-41-21.
Manufacturer.
  Charitable bingo, §97-33-53.
  Piracy of recordings, §97-23-89.
Mass demonstration.
  Mass picketing by union obstructing or interfering with right of access to business or residence, §97-23-109.
Mass picketing.
  Mass picketing by union obstructing or interfering with right of access to business or residence, §97-23-109.
Materially false information.
  Honesty in purchasing firearms act, §97-37-103.
Materials.
  Obscenity, §97-29-103.
Medical records.
  Computer crimes and identity theft, §97-45-1.
Memorial service.
  Military funeral, burial service or memorial service.
    Disturbance by disruptive protest, §97-35-18.
Merchant.
  Using scanner or reencoder to capture credit card information, §§97-19-32, 97-45-31.
Metal property.
  Scrap metal dealers, §97-17-71.
Minors.
  Adult tobacco use on educational property, §97-32-27.
Model glue.
  Glue sniffing, §97-27-33.
Monetary instruments.
  Money laundering, §97-23-101.
Motorized vehicle.
  Hunting or shooting near street or highway, §97-15-13.
Net Mississippi revenue.
  Fantasy contests, §97-33-317.
Net proceeds.
  Charitable bingo, §97-33-53.
Notice.
  Revoked credit card, §97-19-31.

DEFINED TERMS —Cont'd
Offender.
Criminal exposure to diseases, §97-27-14.
Operator.
Charitable bingo, §97-33-53.
Organized gang.
Street gangs, §97-44-3.
Organized theft or fraud enterprise, §97-43-3.1.
Owner.
Piracy of recordings, §97-23-87.
Paraphernalia.
Dog fights, §97-41-19.
Patently offensive.
Obscenity, §97-29-103.
Pattern of racketeering activity.
RICO, §97-43-3.
Pattern of residential mortgage fraud, §97-23-107.
Payee.
Insufficient funds, §97-19-55.
Payee bank.
Insufficient funds, §97-19-55.
Payor.
Insufficient funds, §97-19-55.
Payor bank.
Insufficient funds, §97-19-55.
Performance.
Obscenity, §97-29-103.
Perpetrator.
Recovery of damages for criminal trespass, §97-17-103.
Person.
Adult tobacco use on educational property, §97-32-27.
Home repair fraud, §97-23-103.
Piracy of recordings, §§97-23-87, 97-23-89.
Scrap metal dealers, §97-17-71.
Tobacco sales to underage persons, §97-32-3.
Personal identification card.
Scrap metal dealers, §97-17-71.
Personal identity information.
Computer crimes and identity theft, §97-45-1.
Phantom-ware.
Falsification of sales records to evade sales tax, §97-23-111.
Photographically.
Scrap metal dealers, §97-17-71.
Photographic identification.
Tobacco sales to underage persons, §97-32-3.

DEFINED TERMS —Cont'd
Photographs.
Scrap metal dealers, §97-17-71.
Physically limited.
Harassment of guide, leader, hearing, service, support dog, §97-41-21.
Player.
Fantasy contests, §97-33-303.
Point of sale.
Tobacco sales to underage persons, §97-32-3.
Post a message.
Computer crimes and identity theft, §97-45-1.
Prisoner.
Criminal exposure to diseases, §97-27-14.
Private seller.
Honesty in purchasing firearms act, §97-37-103.
Proper means.
Computer crimes and identity theft, §97-45-1.
Proper notice.
Theft under lease or rental agreement, §97-17-64.
Property.
Computer crimes and identity theft, §97-45-1.
Public authority.
Street gangs, §97-44-3.
Public service animals, §97-41-23.
Pull-tabs.
Charitable bingo, §97-33-53.
Purchase transaction.
Scrap metal dealers, §97-17-71.
Racketeering activity.
RICO, §97-43-3.
Railroad materials.
Scrap metal dealers, §97-17-71.
Railroad passenger ticket.
Forgery and counterfeiting, §97-21-39.
Railroad track materials.
Scrap metal dealers, §97-17-71.
Receives.
Credit card fraud, §97-19-9.
Receiving.
Credit card fraud, §97-19-9.
Records.
Scrap metal dealers, §97-17-71.
Reencoder.
Using scanner or reencoder to capture credit card information, §§97-19-32, 97-45-31.
Represented.
Money laundering, §97-23-101.

DEFINED TERMS —Cont'd
Residence.
  Home repair fraud, §97-23-103.
Retailer.
  Tobacco sales to underage persons, §97-32-3.
Revoked credit card.
  Credit card fraud, §97-19-9.
Right-of-way.
  Hunting or shooting near street or highway, §97-15-13.
Scanning device.
  Using scanner or reencoder to capture credit card information, §§97-19-32, 97-45-31.
Scrap metal dealer, §97-17-71.
Seller.
  Tobacco sales to underage persons, §97-32-3.
Session.
  Charitable bingo, §97-33-53.
Simulated gambling program.
  Gambling, internet sweepstakes cafes, §97-33-8.
Sporting event.
  Fantasy contests, §97-33-303.
Streetgang.
  Mississippi street gang act, §97-44-3.
Street gang member.
  Mississippi street gang act, §97-44-3.
Street gang related.
  Mississippi street gang act, §97-44-3.
Student.
  Possession of weapons, §97-37-17.
Subsequent violations.
  Tobacco sales to underage persons, §97-32-17.
Switchblade knife.
  Student possession of weapons, §97-37-17.
Targeted residential picketing.
  Military funeral, burial service or memorial service.
    Disturbance by disruptive protest, §97-35-18.
Telecommunications device.
  Theft of telecommunication services, §97-25-54.
Telecommunication service.
  Theft, §97-25-54.
Telecommunication service provider.
  Theft of telecommunication services, §97-25-54.
Theft detection device.
  Shoplifting, §97-23-93.1.

DEFINED TERMS —Cont'd
Theft detection device remover.
  Shoplifting, §97-23-93.1.
Theft detection shielding device.
  Shoplifting, §97-23-93.1.
Tobacco product.
  Adult tobacco use on educational property, §97-32-27.
  Tobacco sales to underage persons, §97-32-3.
Transaction.
  Money laundering, §97-23-101.
Transaction data.
  Falsification of sales records to evade sales tax, §97-23-111.
Transaction report.
  Falsification of sales records to evade sales tax, §97-23-111.
Trespass.
  Recovery of damages for criminal trespass, §97-17-103.
Unlawful debt.
  RICO, §97-43-3.
Unlawful telecommunication device.
  Theft of telecommunication services, §97-25-54.
Unloaded.
  Hunting or shooting near street or highway, §97-15-13.
Use.
  Computer crimes and identity theft, §97-45-1.
Victim.
  Computer crimes and identity theft, §97-45-1.
  Recovery of damages for criminal trespass, §97-17-103.
Weapon or deadly weapon.
  Student possession of weapons, §97-37-17.
Week.
  Charitable bingo, §97-33-53.
Wholesale.
  False advertising, §97-23-1.
Wholesale distributes.
  Obscenity, §97-29-103.
Wholesaler.
  Tobacco sales to underage persons, §97-32-3.
Wilful violation.
  Charitable bingo, §97-33-109.
Zapper.
  Falsification of sales records to evade sales tax, §97-23-111.

DEMONSTRATIONS.
Mass picketing by union obstructing or interfering with right of access to business or residence, §97-23-109.

DENATURED ALCOHOL.
Use for scientific or mechanical purposes, §97-31-17.

DENTISTS.
Unlicensed practice, §97-23-43.

DERAILING RAILROAD CARS, §97-25-23.

DESECRATION OF CEMETERY, §97-29-25.

DETONATORS.
Unlawful possession of explosives, §97-37-23.

DISABILITIES, INDIVIDUALS WITH.
Support animals.
  Harassment of guide, leader, hearing, service, support dog, §97-41-21.
Veterans.
  Unauthorized use of insignia, §97-19-43.

DISABLED AMERICAN VETERANS.
Unauthorized use of membership buttons, insignia, etc., §97-19-43.

DISBARMENT.
Bids and bidding.
  Offer of inducements to influence award of contract, §97-11-53.

DISCIPLINARY ACTIONS.
Attorney general.
  Gambling, §97-33-3.
Charitable bingo.
  Manufacturers of supplies and equipment, §97-33-201.
Constables.
  Gambling, §97-33-3.
Custodians of public money.
  Gambling, §97-33-3.
District attorneys.
  Gambling, §97-33-3.
Judges.
  Gambling, §97-33-3.
Sheriffs.
  Gambling, §97-33-3.
Tobacco sales to underage persons.
  Ineligibility to hold tobacco distributor's permit, §97-32-19.

DISCIPLINARY ACTIONS —Cont'd
Tobacco sales to underage persons —Cont'd
  Revocation of retailer's permit, §§97-32-5, 97-32-17.

DISEASES.
Criminal exposure of another to certain diseases, §97-27-14.
Endangerment by bodily substance, §97-27-14.
Introduction of harmful substances, §§97-27-10 to 97-27-12.
Terrorism.
  Introduction of harmful substances, §§97-27-10 to 97-27-12.

DISMISSAL OF ACTIONS.
Deadly weapons.
  Forfeiture of weapon.
    Return upon dismissal or acquittal, §97-37-3.
Trespass.
  Entering lands of another without permission.
    Request of landowner or lessee, §97-17-93.

DISORDERLY CONDUCT.
Buses, §97-35-1.
Disturbances, §§97-35-9 to 97-35-18.
Interference with business, customers, invitees, etc., §97-35-5.
Law enforcement officers.
  Failure to comply with request or commands, §97-35-7.
Public transportation, §97-35-1.
Use of profanity, §97-35-1.

DISQUALIFICATION FROM HOLDING OFFICE.
Acceptance of inducements to accomplish official acts, §97-11-53.
Dueling, §97-39-3.
Highway commission members and employees.
  Bribery, §97-15-3.

DISTRICT ATTORNEYS.
Bad checks.
  Restitution procedures, §§97-19-73 to 97-19-79.
Counseling or defending criminal defendants, §97-11-3.
Criminal investigators.
  Firearms or other weapons.
    Carrying, §97-37-7.

DISTRICT ATTORNEYS —Cont'd
Felony dumping of solid wastes.
  Initiation of criminal prosecution, §97-15-30.
Firearms or other weapons.
  Carrying.
    All prosecutors, §97-37-7.
Forfeitures.
  Trademarks and recordings violation.
    Civil forfeiture proceedings, §§97-21-101, 97-21-103.
Legal assistants.
  Firearms or other weapons.
    Carrying, §97-37-7.
Removal from office.
  Counseling or defending criminal defendants, §97-11-3.
Trademarks and recordings violation.
  Civil forfeiture proceedings, §§97-21-101, 97-21-103.

DISTURBANCES, §§97-35-9 to 97-35-18.
Abusive language, §97-35-11.
Disruption of public peace or peace of others, §97-35-15.
Explosives, noises or offensive conduct, §97-35-9.
Indecent exposure, §97-35-11.
Military funeral, burial service or memorial service.
  Disturbance by disruptive protest, §97-35-18.
Public place of business, §97-35-13.
Religious worship services, §97-35-17.

DOG AND CAT PROTECTION LAW OF 2011, §97-41-16.

DOG FIGHTS, §97-41-19.
Cruelty to animals generally, §§97-41-1 to 97-41-23.
Intentionally conducting fight between canine and hog, §97-41-18.

DOGS.
Adequate shelter, food, water.
  Depriving, §97-41-16.
Carrying or confining in cruel manner, §97-41-16.
Cruelty to animals.
  Generally, §§97-41-1 to 97-41-23.
  Mississippi dog and cat protection law of 2011, §97-41-16.

DOGS —Cont'd
Euthanizing.
  Injured, diseased animals, §97-41-3.
Fights, §97-41-19.
  Intentionally conducting fight between canine and hog, §97-41-18.
Forfeiture of animal involved in cruelty offense to state, §97-41-16.
Harassment of guide, leader, hearing, service or support dogs, §97-41-21.
Mississippi dog and cat protection law of 2011, §97-41-16.
Protection law of 2011, §97-41-16.
Stealing, §97-17-51.
Support animals.
  Harassment of guide, leader, hearing, service or support dogs, §97-41-21.
Torture, mutilate, burn, starve, disfigure, §97-41-16.
Wounding, §97-41-16.

DRESSING ROOMS.
Peeping Tom law, §97-29-61.

DRIVE-BY SHOOTINGS.
Shooting into dwelling house, §97-37-29.
Shooting near dwelling house.
  Causing damage to property, domesticated animal or livestock, §97-37-30.

DRIVERS' LICENSES.
Suspension.
  Petit larceny for leaving premises of establishment at which motor fuel dispensed without paying.
    Second or subsequent offense, §97-17-43.

DUELING, §§97-39-1 to 97-39-11.
Advising, attending or aiding, §97-39-1.
Arrest of participants, §97-39-9.
Deadly weapons.
  Fighting in public with, §97-39-11.
Disfranchisement, §97-39-3.
Disqualification from holding office, §97-39-3.
Egging on a fight, §97-39-11.
Giving, accepting or carrying challenge, §97-39-1.
Leaving state to duel, §97-39-5.
Peace bonds.
  Posting required, §97-39-9.
Penalties, §§97-39-1, 97-39-3.

DUELING —Cont'd
Posting or publishing another for not dueling, §97-39-7.
Vilifying another for not dueling, §97-39-7.

DYNAMITE.
Unlawful possession of explosives, §97-37-23.

DYNAMITE CAPS.
Unlawful possession of explosives, §97-37-23.

E

EAVESDROPPING.
Trespass by Peeping Tom, §97-29-61.

EGGING ON A FIGHT, §97-39-11.

EJECTION FROM BUS.
Disorderly conduct, §97-35-1.

ELECTIONS.
Bribery.
  Candidates for office, §§97-11-11, 97-11-13.
Candidates.
  Disqualification from holding office.
    Dueling, §97-39-3.
  Dueling.
    Disqualification from holding office, §97-39-3.
Crimes, §§97-13-1 to 97-13-45.
  Armed troops brought near election place, §97-13-29.
  Ballot boxes.
    Holding election with box unlocked, §97-13-5.
    Reading ballot before putting into box, §97-13-5.
    Unauthorized disposition of box, §97-13-7.
  Ballots.
    False entries on voting lists, §97-13-9.
    False statement as to inability to mark, or marking to identify voter, §97-13-45.
    Removal before close of polls, §97-13-13.
    Removing, altering, etc., §97-13-9.
    Stuffing, §97-13-9.
    Unlawfully showing marked ballot to another, §97-13-45.
  Bribery.
    Hiring canvasser for unlawful means, §97-13-3.

ELECTIONS —Cont'd
Crimes —Cont'd
  Bribery —Cont'd
    Influencing electors or election officers, §97-13-1.
  Corporate contributions.
    Limitations on political party or candidate, §§97-13-15, 97-13-17.
  Corrupt conduct, etc., by election official, §97-13-19.
    Bribery, §§97-13-1, 97-13-3.
  Direct recording electronic voting equipment (DRE).
    Tampering with, damaging, preventing correct operation, §97-13-43.
  Disturbing election, §97-13-21.
  False entry in statewide management system or poll book, §97-13-41.
  Intimidating, boycotting, etc., §§97-13-37, 97-13-39.
    Elector to prevent voting, §97-13-39.
    Elector to procure vote, §97-13-37.
  Multiple voting, §97-13-36.
  Pollbooks.
    False entry, unauthorized erasure or alteration.
      Penalty, §97-13-41.
  Qualification of voters.
    Dishonest decisions by managers, §97-13-33.
  Return of votes cast.
    Failure or refusal to make, §97-13-23.
  Voter registration, §§97-13-25, 97-13-27.
    Falsely procuring registration, §97-13-25.
    Neglect or misconduct by registrar, §97-13-27.
  Voting.
    Assistance in preparing ballot, §97-13-31.
    At more than one polling place, §97-13-35.
    By unqualified person, §97-13-35.
    For both parties in same primary, §97-13-35.
    Qualification of voters.
      Dishonest decisions by managers, §97-13-33.
Identification card.
  Intimidating elector to prevent voting, use of voter identification requirements for, §97-13-39.

ELECTIONS —Cont'd
Mississippi voter identification card.
  Intimidating elector to prevent voting, use of voter identification requirements for, §97-13-39.
Multiple voting, §97-13-36.
Pollbooks.
  False entry, unauthorized erasure or alteration.
    Penalty, §97-13-41.
Primary elections.
  Voting.
    For both parties in same primary, §97-13-35.
Proof of identity.
  Intimidating elector to prevent voting, use of voter identification requirements for, §97-13-39.
Statewide elections management system.
  False entry in statewide management system or poll book, §97-13-41.
Voter identification card.
  Intimidating elector to prevent voting, use of voter identification requirements for, §97-13-39.
Voter qualifications.
  Identification card.
    Intimidating elector to prevent voting, use of voter identification requirements for, §97-13-39.
Voting systems.
  Direct recording electronic voting equipment (DRE).
    Tampering with, damaging, preventing correct operation.
      Criminal penalty, §97-13-43.

ELECTRIC METERS.
Tampering with meter, §97-25-3.

ELECTRIC POWER.
Critical infrastructure trespass or impeding critical infrastructure, §97-25-59.
Nuclear sabotage, §97-25-57.
Tampering with electric meters, §97-25-3.
Tampering with power lines and facilities, §97-25-1.

ELECTRONIC BANKING TERMINALS.
Credit card fraud.
  Use of card to operate ATM with intent to defraud, §97-19-21.

ELECTRONIC CIGARETTES.
Distribution of alternative nicotine products to underage persons, §97-32-51.
  Educational property, sale or furnishing to underage person near, §97-32-52.

ELECTRONIC MAIL.
Online impersonation, §97-45-33.

EMAIL.
Online impersonation, §97-45-33.

EMBALMING FLUID.
Use of arsenic or other deadly poisons, §§97-27-27, 97-27-29.

EMBEZZLEMENT.
Agents, §97-23-19.
Bailees, §97-23-19.
Buying or receiving embezzled goods, §97-23-23.
Converting property to own use, §97-11-25.
Credit card theft, §§97-19-13, 97-19-29.
Employees, §97-23-19.
Evidence of debt negotiated by delivery but not delivered, §97-23-21.
Failure to deliver money, etc., to successor, §97-11-27.
False account entries, §97-11-29.
False certificate or endorsement, §97-11-29.
Fraud committed in public office, §97-11-31.
Property borrowed or hired, §97-23-27.
Property held in trust or received on contract, §97-23-25.
Railroad tickets, §97-25-9.
Trustees, §97-23-19.

EMERGENCY MEDICAL SERVICES.
Obstructing access to emergency assistance, §97-35-51.

EMERGENCY MEDICAL TECHNICIANS.
Arson.
  Aggravated assault by injury-causing arson, §97-17-14.

EMPLOYERS AND EMPLOYEES.
Racketeer influenced and corrupt organizations, §§97-43-1 to 97-43-11.

EMPLOYMENT RELATIONS.
Embezzlement by employees, §97-23-19.
Enticing away employee without written consent, §97-23-29.
Labor strikes.
  Preventing employment by force or violence, §§97-23-39, 97-23-41.
Larceny.
  Retail employee giving away merchandise without consent of merchant, §97-23-99.
Mass picketing by union obstructing or interfering with right of access to business or residence, §97-23-109.
Picketing.
  Mass picketing by union obstructing or interfering with right of access to business or residence, §97-23-109.
  Preventing employment by force or violence, §§97-23-39, 97-23-41.
Racketeer influenced and corrupt organizations, §§97-43-1 to 97-43-11.
Retail employees.
  Giving away merchandise without consent of merchant, §97-23-99.
Strikes.
  Preventing employment by force or violence, §§97-23-39, 97-23-41.

ENGRAVING PLATES.
Unlawful possession, §§97-21-23, 97-21-25, 97-21-33.

ESCHEAT.
Bad check restitution, §97-19-77.

ESCORT SERVICES.
Prostitution, §§97-29-49, 97-29-51.

ESTRAYS.
Stallion running at large, §97-29-57.

EUTHANASIA.
Injured, diseased animals, §97-41-3.

EVIDENCE.
Adultery.
  Habitual sexual intercourse, §97-29-1.
Alcoholic beverage offenses.
  Shot houses, §97-31-31.
Bad checks.
  Identity of party issuing, uttering or delivering check, §97-19-62.
  Return undelivered notice as intent to defraud, §97-19-57.

EVIDENCE —Cont'd
Burglary.
  Possession of burglar's tools, §97-17-35.
Credit card fraud.
  Notice of revocation, §97-19-31.
  Use of aggregate amount to determine value of goods and services, §97-19-21.
Cruelty to animals.
  Custodial fitness of owner, §97-41-2.
  Harassment of guide, leader, hearing, service, support dog, §97-41-21.
Explosives.
  Unlawful possession of explosives.
    Possession not customary to regular and ordinary occupational activities, §97-37-23.
Fornication.
  Proof of habitual sexual intercourse, §97-29-1.
Guide, leader, hearing, service, support dog.
  Harassment, §97-41-21.
Larceny.
  Negotiable instruments.
    Proof of value, §97-17-45.
  Stealing milk from cows, §97-17-55.
  Theft under lease or rental agreement, §97-17-64.
Obscenity.
  Character and reputation as evidence, §97-29-101.
Parents of illegitimate children.
  Multiple births, §97-29-11.
Shoplifting.
  Presumption of intention to steal merchandise, §97-23-93.
Telegraphs and telephones.
  Wrongful access to telecommunications messages.
    Inadmissibility of information obtained in violation, §97-25-49.

EXPERT WITNESSES.
Cruelty to animals.
  Custodial fitness of owner, §97-41-2.

EXPLOSIVES.
Burglary with explosives, §97-17-37.
False report of placing, §97-37-21.
Fireworks.
  Exploding in certain places, §97-37-27.
RICO, §§97-43-1 to 97-43-11.
Safecracking, §97-17-37.
Seizure, §97-37-23.

EXPLOSIVES —Cont'd
Trespass on premises where manufactured, etc., §97-17-95.
Unlawful possession, §97-37-23.
Unlawful use, §97-37-25.

EXPUNGEMENT OF RECORDS.
Bad check conviction, §97-19-67.
Identity of person used resulting in false charges, §§97-45-27, 97-45-29.

EXTORTION.
Collecting unauthorized fees, §97-11-33.
Credit card theft, §§97-19-13, 97-19-29.
Racketeer influenced and corrupt organizations, §§97-43-1 to 97-43-11.

F

FAIR TRADE LAWS.
False advertising.
  Generally, §§97-23-1 to 97-23-5.

FALSE ADVERTISING, §§97-23-1 to 97-23-5.
Unlawful, penalty, §97-23-1.
Untrue, deceptive or misleading, penalty, §97-23-3.

FALSE ARREST.
Bad checks.
  False arrest immunity, §97-19-69.

FALSE FIRE ALARM, §97-35-45.

FALSE PERSONATION.
Acknowledgments.
  Personating another to acknowledge recorded instrument, §97-19-33.
Bonds, surety.
  Personating another to become bail or surety, §97-19-33.
Confession of judgment.
  Personating another to confess judgment, §97-19-33.
Credit card theft, §§97-19-13, 97-19-29.
Marriage.
  Personating another to marry, §97-19-33.
Masquerading as deaf person, §97-19-37.
Personating another to receive money or property, §97-19-35.

FALSE PRETENSES, §§97-19-39 to 97-19-53.
Bad checks.
  General provisions, §§97-19-55 to 97-19-81.
Banks and financial institutions.
  Insolvent bank receiving deposits, §97-19-47.
False animal pedigree, §97-19-49.
Obtaining signature or thing of value with intent to defraud, §§97-19-39, 97-19-41.
Parent and child.
  Substituting child to deceive parent or guardian, §97-19-53.
Patriotic and fraternal organizations.
  Unauthorized use of membership buttons, insignia, etc., §97-19-43.
Producing child with intent to intercept inheritance, §97-19-45.
Property.
  Selling property previously sold or encumbered, §97-19-51.
Using false negotiable instrument, §97-19-41.

FALSE REPORTING OF CRIME, §97-35-47.

FANTASY CONTESTS, §§97-33-301 to 97-33-317.
Advertisements for contests and prizes, §97-33-305.
Applicability of gaming control act, §97-33-311.
Auditing of contests, §97-33-305.
Complaint to initiate disciplinary proceedings, §97-33-315.
Definitions, §97-33-303.
Disciplinary proceedings, §97-33-315.
Disputes over winnings, resolution, §97-33-313.
Fees for privilege of conducting fantasy contests, §97-33-317.
Investigation of violation of provisions, §97-33-315.
Legality, §97-33-305.
Licensure of operators offering contests within state, §97-33-307.
  Disciplinary actions, §97-33-315.
Number of entries, restrictions, §97-33-305.
Operator implementation requirements, §97-33-305.
Penalties for violations, §97-33-309.

FANTASY CONTESTS —Cont'd
Privilege taxes, §97-33-317.
Prizes and awards, value to be made known to players in advances, §97-33-305.
Revocation of license, §97-33-315.
Statistical information to determine player outcomes, restrictions, §97-33-305.
Third-party scripting programs, prohibition, §97-33-305.
Title of act, §97-33-301.

FEES.
Bad check fees.
  Lenders and retailers, §97-19-81.
Charitable bingo.
  Licensure of manufacturers of supplies and equipment, §97-33-201.
Fantasy contests.
  Fees for privilege of conducting fantasy contests, §97-33-317.
  Licensure of operators offering contests within state, §97-33-307.

FELLATIO, §97-29-59.

FELONIES.
Commission of felony while using firearm.
  Enhanced penalties, §97-37-37.
Registration of convicted felons residing in state, §97-35-27.

FERRIES.
Charging excessive toll, §97-15-15.
Failure to give bond, §97-15-17.
Nuisances.
  Failure to keep road, etc., in repair, §97-15-51.
Obstructing, injuring, etc., §97-15-33.
Suffering ferry to be out of order, §97-15-17.
  Consequences of failure to pay fine, §97-15-51.
Unreasonable detention of person, §97-15-19.

FIDUCIARIES.
Embezzlement, §97-23-19.

FIGHTING ANIMALS OR COCKS, §§97-41-11, 97-41-19.
Intentionally conducting fight between canine and hog, §97-41-18.

FIGHTS.
Dueling, §§97-39-1 to 97-39-11.

FINES.
Adulterated and misbranded food, §97-27-1.
Adultery, §§97-29-1 to 97-29-9.
Adult protective services.
  Adult tobacco use on educational property, §97-32-29.
Advertising.
  Deceptive or misleading advertising, §97-23-3.
  False advertising, §97-23-1.
  Lotteries, §§97-33-33 to 97-33-37.
  Pulling down advertisements, §97-23-5.
Agents.
  Acting as agent for lottery, §97-33-47.
Air conditioner evaporator coils or condensers.
  Sales for scrap violations, §97-17-71.2.
Air piracy.
  Assault with intent to commit air piracy, §97-25-55.
Alcoholic beverage offenses.
  Consignment delivery of alcohol or wine.
    False affidavit, §97-31-15.
  Correctional facilities, §97-31-35.
  General penalty provision, §97-31-53.
  Ginger preparations, §97-31-11.
  Refusal to testify after witness immunity, §97-31-51.
  Sale of alcohol by druggists, §97-31-45.
  Shot houses, §§97-31-27, 97-31-31.
Animal and livestock diseases.
  Noncompliance with burial requirements, §97-27-3.
  Quarantine violations, §97-27-3.
  Selling diseased animals, §97-27-5.
Arson.
  Aggravated assault upon fire fighters, law enforcement officers or emergency medical personnel.
    Injury-causing arson, §97-17-14.
  Fourth degree arson, §97-17-9.
  Willfully or negligently firing woods, marsh, etc., §97-17-13.
Attorney general.
  Counseling or defending criminal defendants, §97-11-3.
Bad checks, §97-19-67.
Bonds, surety.
  Approving worthless official bond, §97-11-9.
Boundary landmarks.
  Altering or destroying, §97-17-15.

FINES —Cont'd
Brake fluid.
  Hydraulic brake fluid.
    Sale of inferior quality, §97-35-19.
Brands and marks.
  Saw-log brands.
    Altering or defacing, §97-17-17.
Bribery.
  Athletic contests, §97-29-17.
  Election bribery, §§97-13-1, 97-13-3.
  Public or private officials, §§97-11-11, 97-11-13.
Bridges.
  Obstructing, injuring, etc., §97-15-33.
Charitable bingo.
  Enforcement powers, §97-33-109.
  Violation of injunction, §97-33-109.
  Wilful violation of regulatory provisions, §97-33-201.
Child labor.
  Enticing away minor without written consent, §97-23-29.
Circuit court clerks.
  Refusal to send up certificate of appeal, §97-11-15.
Code of military justice.
  Commissioned officers.
    Resigning to evade obedience to lawful order, §97-11-39.
Coin-operated machines.
  Fraudulent use or sale of slug, token or other device, §97-21-11.
Communicable diseases.
  Importation to spread by inoculation, §97-27-11.
  Medical certification to travel abroad.
    Failure of smallpox patient to obtain, §97-27-13.
Computer crimes and identity theft.
  Computer equipment, offenses against, §97-45-7.
  Computer fraud, §97-45-3.
  Computer users, offenses against, §97-45-5.
  Cyberstalking, §97-45-15.
  Identity theft, §97-45-19.
  Intellectual property, offenses against, §97-45-9.
  Online impersonation, §97-45-33.
  Posting of messages through electronic media.
    Purpose of causing injury to person, §97-45-17.
Computer fraud, §97-45-3.

FINES —Cont'd
Conspiracy.
  Highway commission members and employees.
    Conspiracy to violate contracts and defraud state, §97-15-5.
  Highway contractors.
    Collusion to raise prices, §97-15-11.
    Conspiracy to violate contracts and defraud state, §97-15-5.
  Impeding railroads, public utilities and carriers, §97-25-43.
  Preventing employment by force or violence, §97-23-41.
  Unauthorized dumping of solid wastes, §97-15-30.
  Unlawful restraint of trade, §97-23-85.
Cotton.
  Fraudulent packing, §97-23-7.
  Scalage, §§97-23-11, 97-23-13.
  Unbranded adulterated cottonseed meal, §97-23-15.
Counterfeiting.
  Credit cards, §§97-19-25, 97-19-29.
  Social security cards, §97-19-85.
Credit card forgery, §§97-19-17, 97-19-29.
Credit card fraud.
  Controlling card as security for debt, §§97-19-15, 97-19-29.
  Furnishing things of value on forged or unlawfully obtained card, §§97-19-23, 97-19-29.
  Possession of incomplete cards or devices for counterfeiting, §§97-19-25, 97-19-29.
  Procuring issuance by false statements, §§97-19-11, 97-19-29.
  Signing with intent to defraud, §§97-19-19, 97-19-29.
  Use of card with intent to defraud, §97-19-21.
  Use of expired or revoked card with intent to defraud, §97-19-31.
Credit card theft, §§97-19-13, 97-19-29.
  Using scanner or reencoder to capture information, §§97-19-32, 97-45-31.
Credit or debit card numbers.
  Fraudulent use, §97-19-85.
Criminal conversion, §97-17-61.
Critical infrastructure trespass or impeding critical infrastructure, §97-25-59.
Cruelty to animals.
  Dog and cat protection law of 2011.
    Violations, §97-41-16.

FINES —Cont'd
Cruelty to animals —Cont'd
  General penalty provision, §97-41-13.
  Guide, leader, hearing, service, support dog.
    Harassment, conduct constituting, §97-41-21.
  Livestock.
    Maliciously or mischievously injuring, §97-41-15.
  Poisoning animals, §97-41-17.
  Public service animals.
    Injury and killing of, §97-41-23.
Dead bodies, §§97-29-19 to 97-29-23.
  Buying or receiving, §97-29-21.
  Disinterment for sale or wantonness, §97-29-19.
  Opening graves for unlawful purposes, §97-29-23.
Deceptive or misleading advertising, §97-23-3.
Desecration of cemetery, §97-29-25.
Diseases, criminal exposure to, §97-27-14.
Disorderly conduct.
  Failure to comply with law enforcement request, §97-35-7.
  Interference with business, customers, invitees, etc., §97-35-5.
  Public buses, §97-35-1.
District attorneys.
  Counseling or defending criminal defendants, §97-11-3.
Disturbances, §§97-35-11 to 97-35-18.
Dog and cat protection law of 2011.
  Violations, §97-41-16.
Dog fights, §97-41-19.
  Intentionally conducting fight between canine and hog, §97-41-18.
Dueling, §§97-39-1, 97-39-3.
Dumping dead wildlife or wildlife parts on highways or private property, §97-15-32.
Election offenses.
  Armed troops brought near election place, §97-13-29.
  Ballot boxes, §§97-13-5, 97-13-7.
  Ballots, §§97-13-9, 97-13-13.
    False statement as to inability to mark, or marking to identify voter, §97-13-45.
    Unlawfully showing marked ballot to another, §97-13-45.
  Bribery, §§97-13-1, 97-13-3.
  Corrupt conduct, etc., by election official, §97-13-19.

FINES —Cont'd
Election offenses —Cont'd
  Direct recording electronic voting equipment (DRE).
    Tampering with, damaging, preventing correct operation, §97-13-43.
  Disturbing election, §97-13-21.
  Failure to make return of votes cast, §97-13-23.
  Intimidating, boycotting, etc., §§97-13-37, 97-13-39.
  Limitations on corporate contributions, §§97-13-15, 97-13-17.
  Multiple voting, §97-13-36.
  Voting, §§97-13-31 to 97-13-36.
Electronic cigarettes and other alternative nicotine products.
  Distribution of alternative nicotine products to underage persons, §97-32-51.
    Educational property, sale or furnishing to underage person near, §97-32-52.
Embezzlement, §§97-23-19 to 97-23-27.
  Agents, fiduciaries, etc., §97-23-19.
  Buying or receiving embezzled goods, §97-23-23.
  Converting property to own use, §97-11-25.
  Evidence of debt negotiable by delivery but not delivered, §97-23-21.
  Failure to deliver money, etc., to successor, §97-11-27.
  False account entries, §97-11-29.
  Fraud committed in public office, §97-11-31.
  Property borrowed or hired, §97-23-27.
  Property held in trust or received on contract, §97-23-25.
  Railroad tickets, §97-25-9.
Endangerment by bodily substance, §97-27-14.
Explosives.
  False report of placing, §97-37-21.
  Unlawful possession of explosives, §97-37-23.
Extortion.
  Collecting unauthorized fees, §97-11-33.
False advertising, §97-23-1.
False fire alarm, §97-35-45.
False personation.
  Masquerading as deaf person, §97-19-37.

FINES —Cont'd
False pretenses.
  Insolvent bank receiving deposits, §97-19-47.
  Patriotic and fraternal organizations.
    Unauthorized use of membership buttons, insignia, etc., §97-19-43.
  Registering false pedigree, §97-19-49.
  Substituting child to deceive parent or guardian, §97-19-53.
False reporting of crime, §97-35-47.
Fantasy contests.
  Penalties for violations, §97-33-309.
Felons.
  Failure to register, §97-35-27.
Ferries.
  Obstructing, injuring, etc., §97-15-33.
Ferry keepers.
  Charging excessive toll, §97-15-15.
  Failure to give bond, §97-15-17.
  Suffering bridge to be out of order, §97-15-17.
  Unreasonable detention of person, §97-15-19.
Firearms and other weapons.
  Aiding or encouraging minor to possess, §97-37-17.
  Carrying while concealed, §97-37-1.
  Exhibiting in threatening manner, §97-37-19.
  Honesty in purchasing firearms act.
    Transfer of firearm in violation of law, soliciting, enticing or encouraging, §97-37-105.
  Parent or guardian permitting minor to possess, §97-37-15.
  Possession by minor or intoxicated person, §97-37-13.
  Shooting into dwelling house, §97-37-29.
  Shooting near dwelling house.
    Causing damage to property, domesticated animal or livestock, §97-37-30.
  Silencers on firearms, §97-37-31.
  Unlawful possession by convicted felon, §97-37-5.
  Use or attempt to use, §97-37-1.
Fireworks.
  Unlawful explosion, §97-37-27.
Food sales.
  Sale of dead, diseased and unclean animals, §97-27-19.
  Unwholesome flour and other provisions, §97-27-17.

FINES —Cont'd
Forgery.
  Credit card forgery, §§97-19-17, 97-19-29.
Fornication, §§97-29-1 to 97-29-9.
Fraud and deceit.
  Computer fraud, §97-45-3.
  Home repair fraud, §97-23-103.
  State or federally funded assistance programs, §97-19-71.
Gambling.
  Betting, gaming or wagering generally, §97-33-1.
  Betting on horse or yacht race, or shooting match, §97-33-27.
  Betting with minor, §97-33-21.
  Building owners, lessees, etc.
    Permitting on premises, §97-33-13.
  Club associations, §97-33-11.
  Forfeiture of winnings.
    Imposition of additional fine, §97-33-5.
  Gambling devices prohibition, §97-33-7.
  Hotel, tavern and boarding-house keepers.
    Refusal to report gambling guests, §97-33-15.
  Internet sweepstakes cafes, §97-33-8.
  Judicial and law enforcement officers, §97-33-3.
  Keeping games or gaming tables, §97-33-9.
  Pool-selling, §97-33-25.
  Resisting seizure of forfeited money and appliances, §97-33-19.
Glue sniffing, §97-27-33.
Guide, leader, hearing, service, support dog.
  Harassment, §97-41-21.
Harmful substances, §97-27-12.
Highway contractors.
  Collusion to raise prices, §97-15-11.
Highways.
  Dead wildlife or wildlife parts.
    Dumping on highways, §97-15-32.
  Littering with tacks, glass or other damaging objects, §97-15-31.
  Littering with trash likely to cause fire, §97-15-29.
  Obstructing or injuring plank-road or covered road, §97-15-35.
  Road overseers.
    Refusing or neglecting duty, §97-15-47.

FINES —Cont'd
Highways —Cont'd
  Road overseers —Cont'd
    Suffering road to remain out of repair, §97-15-49.
Home repair fraud, §97-23-103.
Hunting or shooting near street or highway, §97-15-13.
Hydraulic brake fluid.
  Sale of inferior quality, §97-35-19.
Identification.
  Fraudulent use of identifying information, §97-19-85.
Incest.
  Cohabitation or copulation by divorced persons, §97-29-29.
Indecent exposure, §97-29-31.
Insurance agents.
  Acting for company not complying with law, §97-23-31.
Interference with lawful exercise of trade, §97-23-33.
Intimidation.
  Electors, §§97-13-37, 97-13-39.
Labor and employment relations.
  Enticing away employee without written consent, §97-23-29.
Labor disputes.
  Preventing employment by force or violence, §§97-23-39, 97-23-41.
Landlord and tenant.
  Enticing away lessee without written consent, §97-23-29.
Larceny.
  Coin-operated devices, §97-17-68.
  Criminal conversion, §97-17-61.
  Dogs, §97-17-51.
  Livestock, §97-17-53.
  Motor vehicle grand larceny, §97-17-42.
  Petit larceny, §97-17-43.
  Rental property, §97-17-62.
  Retail employee giving away merchandise without consent of merchant, §97-23-99.
  Shearing wool from dead sheep, §97-17-49.
  Stealing milk from cows, §97-17-55.
  Telegraph and telephone fixtures, §97-25-53.
  Theft under lease or rental agreement, §97-17-64.
  Timber, §97-17-59.
Laser.
  Focusing laser at law enforcement officer. fire fighter or other emergency personnel, §97-35-49.

FINES —Cont'd
Levees.
  Breaking enclosures, §97-15-21.
  Depositing trash or storing commodities, §97-15-21.
  Excavating dirt or sand on levee right-of-way, §97-15-23.
  Hunting or engaging in target practice, §97-15-27.
  Maliciously cutting, destroying, etc., §97-15-25.
Liens.
  Removing agricultural products from premises subject to lien, §97-17-73.
  Removing personal property subject to lien, §§97-17-75, 97-17-77.
Lighthouses.
  Destroying, etc., property, §97-35-21.
Littering.
  Beaches.
    Breakable containers or injurious debris, §97-27-9.
  Highways and private property with trash likely to cause fire, §97-15-29.
  Highways with tacks, glass or other damaging objects, §97-15-31.
  Unauthorized dumping of solid wastes, §97-15-30.
Livestock.
  Registering animal falsely, §97-19-49.
Looting, §97-17-65.
Lotteries.
  Acting as agent for lottery, §97-33-47.
  Advertising, §§97-33-33 to 97-33-37.
  Gambling with minor, applicability to lotteries, §§97-33-21, 97-33-23.
  Raffles, §97-33-49.
  Railroad sale of lottery tickets, §97-33-43.
  Sale of tickets, §§97-33-39, 97-33-41.
  Steamboat sale of lottery tickets, §97-33-45.
Mail fraud, §97-19-83.
Medicaid.
  Fraud.
    Fraudulent devices or schemes to acquire medicaid, §97-19-71.
Metal property purchases or sales.
  Scrap metal dealers or other purchasers.
    Violations, §97-17-71.
Money laundering, §97-23-101.
Mortgages.
  Residential mortgage fraud, §97-23-107.

FINES —Cont'd

Motion pictures.
  Operating unauthorized audiovisual recording device, §97-23-92.

Motor carriers.
  Conspiracy to impede, §97-25-43.
  Wilfully shooting or throwing at, §97-25-47.

Motor vehicles.
  Hydraulic brake fluid.
    Sale of inferior quality, §97-35-19.

Navigable waters.
  Obstructing waterways, §§97-15-43, 97-15-45.

Navigation lights.
  Extinguishing, etc., §97-35-21.

Nuclear sabotage, §97-25-57.

Obscenity, §97-29-109.

Obstructing access to emergency assistance, §97-35-51.

Oleomargarine and other imitation food.
  Labeling violation, §97-23-37.

Online impersonation, §97-45-33.

Organized theft or fraud enterprise, §97-43-3.1.

Parents of illegitimate children.
  Multiple births, §97-29-11.

Peeping Tom law, §97-29-61.
  Photographing or filming another without permission, §97-29-63.

Petit larceny, §97-17-43.

Photographing or filming another without permission where there is expectation of privacy, §97-29-63.

Picketing.
  Mass picketing by union obstructing or interfering with right of access to business or residence, §97-23-109.

Piracy of recordings, §§97-23-87, 97-23-89.
  Motion pictures.
    Operating unauthorized audiovisual recording device, §97-23-92.

Plants.
  Removal of sea oats or uniola paniculata from shores, §97-17-84.

Poisons.
  Arsenic, §§97-27-25 to 97-27-29.
  Labeling and registration, §§97-27-23, 97-27-29.
  Unlawful glue sales to minors, §97-27-33.

Polygamy.
  Teaching doctrine, §97-29-43.

FINES —Cont'd

Possession of dies, plates, etc.
  Intent to market imitation goods, §97-21-55.

Professions and occupations.
  Unlicensed practice, §97-23-43.

Prostitution, §§97-29-49, 97-29-51.

Public contracts.
  Offer of inducements to influence award of contract, §97-11-53.

Public drunkenness, §97-29-47.

Public officers and employees.
  Elected officials exercising duties without oath of office or giving bond, §97-11-41.
  Failure to perform any duty, §97-11-37.
  Failure to return known offenders, §97-11-35.
  Offer of inducements to influence accomplishment of official act, §97-11-53.
  Purposeful avoidance of knowledge of offense, §97-11-35.
  Railroad fares.
    Reduced fare and free pass violations, §97-11-43.

Public profanity, §97-29-47.

Public utilities.
  Conspiracy to impede, §97-25-43.

Racketeer influenced and corrupt organizations, §97-43-7.

Raffles, §97-33-49.

Railroad offenses.
  Conspiracy to impede trains, §97-25-43.
  Derailing cars, §97-25-23.
  Destroying crossing-sign, railroad-gate or warning-signals, §97-25-5.
  Disposition of animal killed by train before reporting incident, §97-25-33.
  Driving vehicle or livestock on track, §97-25-7.
  Embezzlement of tickets, §97-25-9.
  Failure of locomotive to stop before crossing track of another company, §97-25-19.
  Jumping on or off cars in motion, §97-25-15.
  Obstructing or injuring trains, §§97-25-21, 97-25-23.
  Seizing and running locomotive, §97-25-25.
  Signaling or unlawfully interfering with train, §97-25-27.

FINES —Cont'd
Railroad offenses —Cont'd
  Stealing a ride, §97-25-29.
  Stealing or interfering with communications or signaling equipment, §97-25-35.
  Stopping or standing at crossing, §97-25-37.
  Uncoupling locomotives and cars, §97-25-39.
  Wilfully shooting from or on moving train, §97-25-41.
  Wilfully shooting or throwing at trains, §97-25-47.
Real property.
  Dead wildlife or wildlife parts.
    Dumping on private property, §97-15-32.
  Littering private property with trash likely to cause fire, §97-15-29.
Rental storage batteries, §§97-23-55 to 97-23-61.
Residential mortgage fraud, §97-23-107.
Restraint of trade.
  Threats or coercion to prevent lawful conduct of business, §97-23-83.
Retail sales receipts.
  Falsely using or producing, §97-23-105.
Road overseers.
  Refusing or neglecting duty, §97-15-47.
  Suffering road to remain out of repair, §97-15-49.
Sales tax.
  Falsification of sales records.
    Automated sales suppression devices, zappers and phantom-ware programs, §97-23-111.
Scrap metal dealers or other purchasers.
  Air conditioner evaporator coils or condensers.
    Sales for scrap violations, §97-17-71.2.
  Metal property.
    Purchase or sales violations, §97-17-71.
  Registration by scrap metal dealers.
    Violation, §97-17-71.1.
Shooting into dwelling house, §97-37-29.
Shooting near dwelling house.
  Causing damage to property, domesticated animal or livestock, §97-37-30.

FINES —Cont'd
Shooting or throwing at motor vehicle, §97-25-47.
Shoplifting, §§97-23-93, 97-23-94.
  Theft detection devices.
    Removal and shielding devices, §97-23-93.1.
Silencers on firearms, §97-37-31.
Social security numbers.
  Fraudulent use, §97-19-85.
Solid waste.
  Unauthorized dumping, §97-15-30.
Stallion or jack owners.
  Permitting animals to run at large, §97-29-57.
Storage batteries, §§97-23-55 to 97-23-61.
Streetgangs.
  Penalties for criminal activity, §97-44-19.
Supplemental nutritional assistance program (SNAP).
  Fraudulent devices or schemes to acquire benefits, §97-19-71.
Tax collectors.
  Collecting privilege tax without issuing license, §97-11-49.
  Failure to complete duplicate tax receipts, §97-11-45.
  Failure to make settlement, §97-11-47.
Telegraph and telephone companies.
  Failure to dispatch governmental messages, §97-25-51.
  Injuring or destroying lines, §97-25-53.
  Interrupting communications, §97-25-53.
  Stealing or destroying fixtures, §97-25-53.
  Telephone profanity, §97-29-45.
  Wrongful access to telecommunications messages, §97-25-49.
Telephone profanity, §97-29-45.
Theft of telecommunication services, §97-25-54.
Tobacco sales to underage persons, §97-32-5.
  Juvenile misrepresentation of age, §97-32-13.
  Point of sale warning signs, §97-32-11.
  Retail sales clerks, §97-32-7.
  Sale of unsealed tobacco products, §97-32-17.
  Tobacco permit violations, §97-32-19.
  Vending machine tobacco sales, §97-32-15.

FINES —Cont'd

Toll-bridge keepers.

Charging excessive toll, §97-15-15.

Failure to give bond, §97-15-17.

Suffering bridge to be out of order, §97-15-17.

Unreasonable detention of person, §97-15-19.

Toy pistols.

Unlawful sales, §97-37-33.

Trees and timber.

Boxing pine trees, §97-17-79.

Cutting or rafting upon lands of another, §97-17-81.

Injuring or destroying shade or ornamental trees, §97-17-83.

Saw-log brands.

Altering or defacing, §97-17-17.

Trespass.

Airports.

Air operations or sterile areas, §97-17-87.

Altering or destroying notices posted on land, §97-17-91.

Customer or patron.

Refusal to leave premises upon request, §97-23-17.

Destruction or carrying away of vegetation, etc., §97-17-89.

Entering lands of another without permission, §97-17-93.

Entry on premises where dangerous devices are manufactured, etc., §97-17-95.

Going upon enclosed land of another, §97-17-85.

Going upon premises of another after being forbidden to do so, §97-17-97.

Inciting or soliciting another to trespass, §97-17-99.

Remaining on premises when asked to leave, §97-17-97.

Wilful or malicious trespass, §97-17-87.

Trusts and trustees.

Trustees of state institutions.

Incurring liability in excess of income, §97-11-51.

Universal product codes.

Falsely using or producing, §97-23-105.

Vandalism.

Cemetery property, §97-17-39.

Churches, §97-17-39.

FINES —Cont'd

Vandalism —Cont'd

Disfiguring, etc., levees, §97-15-23.

Highway signs and signals, §§97-15-1, 97-15-13.

Lighthouse property, §97-35-21.

Public buildings, §97-17-39.

School buildings, §97-17-39.

Voter registration, §§97-13-25, 97-13-27.

Voyeurism, §97-29-61.

Photographing or filming another without permission, §97-29-63.

Weapons of mass destruction.

False reports of placing, §97-37-21.

Wire fraud, §97-19-83.

FINGERPRINTS.

Firearms and other weapons.

Permit to carry, §97-37-7.

FIREARMS AND OTHER WEAPONS.

Aircraft.

Boarding with dangerous or deadly weapon, §97-25-55.

Buses.

Willfully shooting or throwing at, §97-25-47.

Carrying.

Church protection act.

Security program to allow persons to carry firearms in church for protection of congregation.

Defense against charge of carrying deadly weapon, §97-37-9.

Concealed, §97-37-1.

Permit to carry, §97-37-7.

Persons authorized to carry, §97-37-7.

Church protection act.

Security program to allow persons to carry firearms in church for protection of congregation.

Defense against charge of carrying deadly weapon, §97-37-9.

Commission of felony while using firearm.

Enhanced penalties, §97-37-37.

Concealed weapons.

Carrying, §97-37-1.

Confiscation.

Sale of confiscated firearms at auction, §97-37-3.

Criminal offenses, §§97-37-1 to 97-37-37.

Dealers.

Honesty in purchasing firearms act, §§97-37-101 to 97-37-105.

FIREARMS AND OTHER WEAPONS —Cont'd
Defenses against charge, §97-37-9.
Dueling.
  Fighting in public with deadly weapon, §97-39-11.
Exceptions to prohibition.
  Convicted felons, §97-37-5.
  Defenses against charge, §97-37-9.
Exhibiting in threatening manner, §97-37-19.
Felons.
  Unlawful to possess, §97-37-5.
Forfeiture of weapon, §97-37-3.
Honesty in purchasing firearms act, §§97-37-101 to 97-37-105.
  Definitions, §97-37-103.
  Title of act, §97-37-101.
  Transfer of firearm in violation of law.
    Soliciting, enticing or encouraging, §97-37-105.
Hunting or shooting near street or highway, §97-15-13.
Intoxicated persons.
  Unlawful possession, §97-37-13.
Mental health.
  Discharge from court-ordered treatment.
    Petition to remove firearm disability, §97-37-5.
Minors, §§97-37-13 to 97-37-17.
  Parent or guardian not to allow possession, §97-37-15.
  Possession of weapons and cartridges, §97-37-13.
    Act of delinquency, §97-37-14.
  Student possession, §97-37-17.
  Unlawful possession, §97-37-13.
Motor vehicles.
  Willfully shooting or throwing at, §97-25-47.
Permit to carry.
  Criminal background check, §97-37-7.
  Denial, grounds, §97-37-7.
  Duration, §97-37-7.
  Expiration, §97-37-7.
  Felons.
    Issuance prohibited, §97-37-7.
  Fingerprints, §97-37-7.
  Lost or destroyed.
    Duplicate, §97-37-7.
  Notice of expiration, §97-37-7.
  Persons authorized to carry, §97-37-7.
  Renewal, §97-37-7.
  Required, §97-37-7.

FIREARMS AND OTHER WEAPONS —Cont'd
Persons permitted to carry weapons, §97-37-7.
Purchases.
  Honesty in purchasing firearms act, §§97-37-101 to 97-37-105.
Railroad cars.
  Willfully shooting or throwing at, §97-25-47.
Railroad offenses.
  Shooting at train, §97-25-47.
  Willfully shooting from or on moving train, §97-25-41.
Receipt of stolen firearms, §97-37-35.
Return of weapon upon dismissal or acquittal, §97-37-3.
Shooting into dwelling house, §97-37-29.
Shooting near dwelling house.
  Causing damage to property, domesticated animal or livestock, §97-37-30.
Silencers on firearms, §97-37-31.
Toy pistols.
  Sale prohibition, §97-37-33.
Transportation facilities.
  Willfully shooting or throwing at, §97-25-47.
Use or attempt to use, §97-37-1.

FIRE-CRACKERS.
Unlawful explosion, §97-37-27.

FIREFIGHTERS AND FIRE DEPARTMENTS.
Assault upon fireman.
  Aggravated assault by injury-causing arson, §97-17-14.
Laser.
  Focusing laser at law enforcement officer, fire fighter or other emergency personnel, §97-35-49.

FIRES AND FIRE PREVENTION.
False fire alarm, §97-35-45.

FIREWORKS.
Unlawful explosion, §97-37-27.

FLASHING.
Indecent exposure, §97-29-31.

FLOOD CONTROL.
Levees.
  Breaking enclosures, §97-15-21.
  Damaging, §97-15-21.
  Depositing trash, etc., §97-15-21.
  Disfiguring, §97-15-23.

FLOOD CONTROL —Cont'd
Levees —Cont'd
  Excavating dirt or sand on levee right-of-way, §97-15-21.
  Hunting or engaging in target practice, §97-15-27.
  Mainline levee structure or right-of-way.
    Hunting or engaging in target practice, §97-15-27.
  Maliciously cutting, destroying, etc., §97-15-25.
  Storing commodities, §97-15-21.

FOOD.
Oleomargarine and other imitation food.
  Labeling violation, §97-23-37.
Unwholesome bread or drink.
  Retail sales, §97-27-15.
Unwholesome flour and other provisions.
  Retail sales, §97-27-17.

FOOD ESTABLISHMENTS.
Disorderly conduct, §97-35-5.

FORCE.
Motor carriers and public utilities.
  Obstructing or impeding by force, §97-25-45.

FOREIGN COUNTRIES.
Forgery of currency, §§97-21-15, 97-21-33.

FOREST FIRES.
Arson.
  Willfully or negligently firing woods, marsh, etc., §97-17-13.

FORESTS AND FORESTRY.
Arson.
  Willfully or negligently firing woods, marsh, etc., §97-17-13.

FORFEITURES.
Animal cruelty.
  Forfeiture of animal involved in cruelty offense to state, §97-41-16.
Cruelty to animals.
  Forfeiture of animal involved in cruelty offense to state, §97-41-16.
Firearms and other weapons.
  Streetgangs.
    Forfeiture and disposition of seized property, §97-44-17.

FORFEITURES —Cont'd
Recordings violations.
  Civil forfeiture proceedings, §§97-21-101, 97-21-103.
    Property subject to forfeiture, §97-23-89.
Streetgangs.
  Firearms and other weapons.
    Forfeiture and disposition of seized property, §97-44-17.
Trademarks.
  Counterfeiting or forging.
    Civil forfeiture proceedings, §§97-21-101, 97-21-103.
    Property subject to, §97-21-53.
      Dies, plates, printed labels, §97-21-55.

FORGERY.
Accounts and ledgers, §§97-21-1, 97-21-3.
Acknowledgments.
  Certificate of acknowledgment or proof of recordable instrument, §§97-21-7, 97-21-63.
Bank notes and other negotiable instruments, §97-21-37.
  Selling or offering to sell counterfeit notes, §97-21-49.
Coin-operated machines, §97-21-11.
Connecting parts of several genuine instruments to make one instrument, §97-21-31.
Conveyances, §97-21-45.
Corporations.
  Account books kept by corporations, §97-21-3.
  Corporate evidence of debt signed by pretended officer, §97-21-19.
  Corporate seals, §97-21-47.
Court judgment or decree, §97-21-45.
Court papers, §97-21-35.
Currency or treasury notes of United States, §§97-21-13 to 97-21-17.
Deeds, §97-21-63.
  Proof of deeds, §97-21-7.
Engraving plate for printing negotiable instruments or other evidence of debt, §§97-21-23, 97-21-25.
Evidence.
  Intent to defraud, §97-21-27.

FORGERY —Cont'd
False pretenses.
Making or uttering instrument in own name with intent to defraud, §97-21-29.
Instruments deemed writings, §97-21-5.
Intent to defraud.
Evidentiary effect, §97-21-27.
Licenses, §97-21-35.
Local government treasury warrants, §97-21-61.
Negotiable instruments.
Selling or offering to sell counterfeit notes or other evidence of debt, §97-21-49.
Penalty, §97-21-33.
Pleadings, §97-21-35.
Railroad tickets, §§97-21-39 to 97-21-43.
RICO, §§97-43-1 to 97-43-11.
Signatures.
Unauthorized use or signing of another's name, §97-21-51.
Slugs, tokens or other devices, §97-21-11.
State departments and agencies.
Account books kept in public offices, §97-21-1.
State seal, §97-21-47.
Stock or public security, §97-21-9.
Summons and process, §97-21-35.
Record of return on process, §97-21-45.
Trademarks, §§97-21-53 to 97-21-57.
United States treasury notes.
Selling or offering to sell counterfeit notes, §97-21-49.
United States treasury warrants, §97-21-61.
Warrants on state treasury, §97-21-61.
Wills, §§97-21-45, 97-21-63.
Writing deemed forgery.
Destruction, erasure or obliteration, §97-21-21.
Written instruments, §97-21-35.

FORMS.
Bad checks.
Statutory notice of unpaid check, §97-19-57.
Identity theft investigations.
Subpoena, §97-45-29.
Subpoenas.
Identity theft investigations, §97-45-29.

FORMS —Cont'd
Tobacco sales to underage persons.
Point of sale warning signs, §97-32-11.
Retail sales clerks' agreement, §97-32-7.

FORNICATION, §§97-29-1 to 97-29-9.
Going out of state to marry, §97-29-9.
Incestuous fornication, §§97-29-5, 97-29-29.
Incestuous relationships, §97-29-5.
Teacher and pupil, §97-29-3.
Unlawful sexual intercourse, §97-29-1.

FRATERNAL BENEFIT SOCIETIES.
False pretenses.
Unauthorized use of membership buttons, insignia, etc., §97-19-43.

FRAUD.
Advertising.
False advertising, §§97-23-1 to 97-23-5.
Assistance program fraud, §97-19-71.
Bad checks.
General provisions, §§97-19-55 to 97-19-81.
Computer fraud, §97-45-3.
Cotton, §§97-23-7 to 97-23-15.
Credit card forgery, §§97-19-17, 97-19-29.
Credit card fraud, §§97-19-5 to 97-19-31.
Credit card numbers.
Fraudulent use, §97-19-85.
Credit card theft, §§97-19-13, 97-19-29.
Debit card numbers.
Fraudulent use, §97-19-85.
Embezzlement.
General provisions, §§97-11-25 to 97-11-31.
False personation, §§97-19-33 to 97-19-37.
False pretenses.
General provisions, §§97-19-39 to 97-19-53.
Food sales.
Selling meat of animal not slaughtered, §97-27-15.
Unwholesome flour and other provisions, §97-27-17.
Harmful substances, §97-27-12.
Highway commission members and employees.
Conspiracy to violate contracts and defraud state, §97-15-5.

FRAUD —Cont'd
Highway contractors.
  Conspiracy to violate contracts and defraud state, §97-15-5.
Home repair fraud, §97-23-103.
Identifying information.
  Fraudulent use, §97-19-85.
Livestock.
  Fraudulent conduct to obtain livestock.
    Crime, §97-17-53.
Mail fraud, §97-19-83.
Mortgages.
  Residential mortgage fraud, §97-23-107.
Organized theft or fraud enterprise, §97-43-3.1.
Residential mortgage fraud, §97-23-107.
RICO, §§97-43-1 to 97-43-11.
Social security numbers.
  Fraudulent use, §97-19-85.
State or federally funded assistance programs, §97-19-71.
Theft of telecommunication services, §97-25-54.
Welfare fraud, §97-19-71.

FUNDS TRANSFERS.
Insufficient funds.
  Electronically converted checks or electronic commercial debits, §97-19-55.
    Penalties, §97-19-67.
    Prima facie evidence of identity of party drawing on account, §97-19-62.
    Returned undelivered notice as intent to defraud, §97-19-57.
      When notice not required, §97-19-61.
    Separate violation constitutes separate offense, §97-19-65.
    Statement of reason for dishonor, §97-19-63.
Metal property purchases.
  Scrap metal dealers or other purchasers.
    Required method of payment, §97-17-71.
Scrap metal dealers or other purchasers.
  Metal property purchases.
    Required method of payment, §97-17-71.

FUNERAL SERVICES.
Disturbances.
  Military funeral, burial service or memorial service.
    Disturbance by disruptive protest, §97-35-18.
Military funeral, burial service or memorial service.
  Disturbance by disruptive protest, §97-35-18.

FUSES.
Unlawful possession of explosives, §97-37-23.

G

GAMBLING, §§97-33-1 to 97-33-49.
A.B.C. roulette tables, §97-33-9.
Antique coin machines.
  Exception to gambling device prohibition, §97-33-7.
Betting, gaming or wagering.
  Custodians of public money, §97-33-3.
  Judicial officers, §97-33-3.
  Law enforcement officers, §97-33-3.
  Prohibition, §97-33-1.
Casino markers as bad checks.
  Definitions, §97-19-55.
  Restitution and service charges, §97-19-75.
Charitable bingo.
  General provisions, §§97-33-50 to 97-33-203.
Children and minors.
  Gambling with minor, §§97-33-21, 97-33-23.
Club associations.
  Interest as rake-off or take-out, §97-33-11.
Construction of laws, §97-33-29.
Criminal forfeiture of money and appliances, §§97-33-17, 97-33-19.
  Penalty for resisting seizure, §97-33-19.
Cruise vessels.
  Exception to forfeiture of money and appliances, §97-33-17.
  Exception to gambling device prohibition, §97-33-7.
  Exception to horse or yacht betting, §97-33-27.
  Exception to pool-selling prohibition, §97-33-25.
  Exception to prohibition, §97-33-1.

GAMBLING —Cont'd

E.O. roulette tables, §97-33-9.

Fantasy contests, §§97-33-301 to 97-33-317.

Forfeit of winnings.
  Additional fine, §97-33-5.

Gambling devices.
  Prohibited possession or ownership, §97-33-7.

Gaming tables or banks, §97-33-9.

Horse racing.
  Betting prohibition, §97-33-27.

Hotels, taverns and boarding-houses.
  Innkeepers as informants on gamblers, §97-33-15.

Internet sweepstakes cafes.
  Prohibited, §97-33-8.

Juke boxes.
  Exception to gambling device prohibition, §97-33-7.

Landlord and tenant.
  Building owners, lessees, etc.
    Permitting gambling on premises, §97-33-13.

Lotteries.
  General provisions, §§97-33-31 to 97-33-49.

Music machines.
  Exception to gambling device prohibition, §97-33-7.

Pool-selling, §97-33-25.

RICO, §§97-43-1 to 97-43-11.

Riverboat gambling.
  Exception to gambling device prohibition, §97-33-7.

Riverboats.
  Exception to forfeiture of money and appliances, §97-33-17.
  Exception to horse or yacht betting, §97-33-27.
  Exception to pool-selling prohibition, §97-33-25.
  Exception to prohibition, §97-33-1.

Rowley-Powley, §97-33-9.

Shooting matches.
  Betting prohibition, §97-33-27.

Yacht racing.
  Betting prohibition, §97-33-27.

GAMING.

Fantasy contests, §§97-33-301 to 97-33-317.

Gambling generally, §§97-33-1 to 97-33-49.

GAMING —Cont'd

Lotteries.
  General provisions, §§97-33-31 to 97-33-49.

GAMING ESTABLISHMENTS.

Debts not evidenced by credit instrument.
  Fantasy contests.
    Resolution of disputes over winnings, §97-33-313.

GANGS, §§97-44-1 to 97-44-19.

Buildings, unlawful use of private buildings.
  Injunctions, abatement, damages or other remedies for nuisance, §97-44-15.

Civil causes of action, §§97-44-5 to 97-44-17.
  Complaint process, §97-44-7.
  Parties, §97-44-5.
  Punitive damages, §97-44-13.
  Service of process, §97-44-11.
  Venue, §97-44-9.

Construction of act, §97-44-3.

Definitions, §97-44-3.

Firearms and other weapons.
  Forfeiture and disposition of seized property, §97-44-17.

Penalties for criminal activity, §97-44-19.

Title of act, §97-44-1.

GAS BOMBS.

Unlawful possession of explosives, §97-37-23.

GAS METERS.

Tampering with meter, §97-25-3.

GAS STATIONS.

Petit larceny.
  Leaving premises of establishment at which motor fuel dispensed without paying, §97-17-43.

GIFTS.

Charitable bingo.
  Manufacturers of supplies and equipment, §97-33-79.

GINGER.

Alcoholic beverage offenses.
  Illegal possession of liquid ginger preparation, §97-31-11.

GLUE SNIFFING, §97-27-33.

GRAND ARMY OF THE REPUBLIC.

Unauthorized use of membership buttons, insignia, etc., §97-19-43.

GRAND JURY.
Felony dumping of solid wastes, §97-15-30.
Gambling.
  Investigation of club associations, §97-33-11.

GRAND LARCENY, §§97-17-41, 97-17-42.

GUARDIANSHIPS AND CONSERVATORSHIPS.
Adultery between parties, §97-29-7.
False pretenses.
  Substituting child to deceive parent or guardian, §97-19-53.
Firearms and other weapons.
  Guardian permitting ward to possess, §97-37-15.
Fornication between parties, §97-29-7.

GUARDS.
Carrying firearms or other weapon.
  Bank guards, company guards, watchmen, railroad special agents, §97-37-7.
Prison guards.
  Alcoholic beverages.
    Sale, possession, etc., §97-31-35.

GUIDE DOGS.
Harassment, §97-41-21.

H

HABITUAL DRUNKENNESS.
Public officers and employees, §97-11-23.

HABITUAL OR REPEAT OFFENDERS.
Alcoholic beverage offenses.
  Moonshining, §97-31-21.
Bad checks, §97-19-67.
Counterfeiting.
  Social security cards, §97-19-85.
Credit card fraud.
  Use of card with intent to defraud, §97-19-21.
Credit or debit card numbers.
  Fraudulent use, §97-19-85.
Firearms and other weapons.
  Carrying while concealed, §97-37-1.
  Stolen firearms, §97-37-35.
  Use or attempt to use, §97-37-1.
Gambling.
  Gambling devices prohibition, §97-33-7.

HABITUAL OR REPEAT OFFENDERS —Cont'd
Highways.
  Dead wildlife or wildlife parts.
    Dumping on highways, §97-15-32.
  Littering with trash likely to cause fire, §97-15-29.
Identification.
  Fraudulent use of identifying information, §97-19-85.
Larceny.
  Coin-operated devices, §97-17-68.
  Motor vehicle grand larceny, §97-17-42.
Littering.
  Highways and private property with trash likely to cause fire, §97-15-29.
Moonshining, §§97-31-21, 97-31-23.
Obscenity, §97-29-109.
Parents of illegitimate children.
  Multiple births, §97-29-11.
Piracy of recordings, §§97-23-87, 97-23-89.
Professions and occupations.
  Unlicensed practice, §97-23-43.
Real property.
  Dead wildlife or wildlife parts.
    Dumping on private property, §97-15-32.
  Littering private property with trash likely to cause fire, §97-15-29.
Shoplifting, §§97-23-93, 97-23-94.
Social security numbers.
  Fraudulent use, §97-19-85.
Stolen firearms, §97-37-35.
Theft of telecommunication services, §97-25-54.
Tobacco sales to underage persons, §97-32-5.
  Sale of unsealed tobacco products, §97-32-17.
  Tobacco permit violations, §97-32-19.
Trespass.
  Entering lands of another without permission, §97-17-93.

HACKING.
Computer crimes generally, §§97-45-1 to 97-45-33.

HARASSMENT.
Street gangs, §§97-44-1 to 97-44-19.
Telephone harassment, §97-29-45.

HARBORS AND PORTS.
Ballast.
  Discharging in harbor, §97-15-43.

HAY WAREHOUSES.
Fireworks.
  Unlawful to explode, §97-37-27.

HEARING DOGS.
Harassment of leader dogs, §97-41-21.

HEARINGS.
Forfeitures.
  Trademarks and recordings violations.
    Civil forfeiture.
      Petition for forfeiture, §97-21-103.
Trademarks and recordings violations.
  Civil forfeiture.
    Petition for forfeiture, §97-21-103.

HEPATITIS B.
Criminal exposure of another to certain diseases, §97-27-14.

HEPATITIS C.
Criminal exposure of another to certain diseases, §97-27-14.

HIGHWAY CONTRACTORS.
Conspiracy.
  Collusion to raise prices, §97-15-11.
  Violate contracts and defraud state, §97-15-5.

HIGHWAYS, ROADS AND STREETS.
Blocking, §§97-15-37, 97-35-23, 97-35-25.
Covered roads.
  Obstructing or injuring, §97-15-35.
Dead wildlife or wildlife parts.
  Dumping on highways, §97-15-32.
Hunting or shooting near, §97-15-13.
Littering with tacks, glass or other damaging objects, §97-15-31.
Littering with trash likely to cause fire, §97-15-29.
Nuisances.
  Failure to keep road, etc., in repair, §97-15-51.
    Road overseer, §97-15-47.
Obstructing, §§97-15-37, 97-35-23, 97-35-25.
Plank-roads.
  Obstructing or injuring, §97-15-35.
Road overseers, §§97-15-47, 97-15-49.
  Neglect of duty, §97-15-47.
  Suffering road to remain out of repair, §97-15-49.
Vandalism, §97-15-1.
  Juvenile offenders, §97-15-1.

HIGHWAY SIGNS.
Littering with trash likely to cause fire, §97-15-29.

HIGHWAY SIGNS —Cont'd
Unauthorized dumping of solid wastes, §97-15-30.

HIJACKING AIRCRAFT, §97-25-55.

HOME INVASION, §97-17-23.

HOME REPAIR FRAUD, §97-23-103.

HOME SCHOOL.
Firearms and other weapons.
  Student possession of weapons.
    Exception to prohibition, §97-37-17.

HOMOSEXUAL SEX, §97-29-59.

HONESTY IN PURCHASING FIREARMS ACT, §§97-37-101 to 97-37-105.

HORSE RACING.
Betting prohibition, §97-33-27.

HOTELS AND OTHER LODGING PLACES.
Disorderly conduct, §97-35-5.

HUMAN TRAFFICKING.
Commercial sexual activity.
  Immunity from prostitution prosecution for acts resulting from being a trafficked person, §97-29-49.
  Promoting prostitution.
    Trafficked person accused.
      Mitigating circumstance, §97-29-51.
Racketeer influenced and corrupt organizations, §§97-43-1 to 97-43-11.
RICO, §§97-43-1 to 97-43-11.

HUNTING.
Levees.
  Hunting or engaging in target practice, §97-15-27.
Shooting near street or highway, §97-15-13.

HYDRAULIC BRAKE FLUID.
Sale of inferior quality, §97-35-19.

I

IDENTIFICATION.
Elections.
  Intimidating elector to prevent voting, use of voter identification requirements for, §97-13-39.

IDENTIFICATION CARDS.
Fraudulent use, §97-19-85.

IDENTITY THEFT, §97-45-19.
Access to information.
  Law enforcement, persons submitting police reports, court order, §97-45-29.
Crimes chargeable, §97-45-29.
Expungement of charges, arrest record or conviction, §97-45-29.
  Name or identification of person used without consent resulting in charges, §§97-45-27, 97-45-29.
Identity theft passports.
  Verification expunction order entered, §97-45-29.
Investigations by attorney general.
  Authority in conducting, §97-45-29.
Online impersonation, §97-45-33.
Organized theft or fraud enterprise, §97-43-3.1.

IMMUNITY.
Alcoholic beverage offenses.
  Immunity from prosecution, §97-31-51.
    Emergency medical assistance requested for another, §97-31-55.
Euthanizing injured, diseased animals.
  Acting in good faith, §97-41-3.

IMPERSONATION.
Acknowledgments.
  Personating another to acknowledge recorded instrument, §97-19-33.
Bonds, surety.
  Personating another to become bail or surety, §97-19-33.
Confession of judgment.
  Personating another to confess judgment, §97-19-33.
Credit card theft, §§97-19-13, 97-19-29.
Marriage.
  Personating another to marry, §97-19-33.
Masquerading as deaf person, §97-19-37.
Online impersonation, §97-45-33.
Personating another to receive money or property, §97-19-35.

INCEST, §§97-29-27, 97-29-29.
Divorce grounds, §97-29-29.
Marriages void, §97-29-27.

INCESTUOUS ADULTERY, §§97-29-5, 97-29-9, 97-29-29.
Couple divorced for incest, §97-29-29.

INCESTUOUS FORNICATION, §§97-29-5, 97-29-9, 97-29-29.
Couple divorced for incest, §97-29-29.

INCESTUOUS MARRIAGES, §97-29-27.

INDECENT EXPOSURE, §97-29-31.
Disturbance by indecent exposure, §97-35-11.

INDECENT LANGUAGE.
Public profanity, §97-29-47.
Telephone profanity, §97-29-45.

INDICTMENTS.
Corporate keepers of ferry, toll-bridge or causeway.
  Consequences of failure to pay fine, §97-15-51.
Deadly weapons.
  Exhibiting in threatening manner.
    Proof of firing condition of weapon, §97-37-19.
False personation to marry.
  Complaint pleadings, §97-19-33.

INFORMANTS.
Felony dumping of solid wastes.
  Crime solvers' rewards, §97-15-30.
Gambling.
  Hotel, tavern and boarding-house keepers.
    Refusal to report gambling guests, §97-33-15.

INJUNCTIONS.
Charitable bingo.
  Enforcement powers, §97-33-109.
Mass picketing by union obstructing or interfering with right of access to business or residence.
  Injunctive relief for property owner, §97-23-109.
Nuisance abatement.
  Streetgangs.
    Unlawful use of private buildings, §97-44-15.
Racketeer influenced and corrupt organizations, §97-43-9.
Scrap metal dealers.
  Registration violations, §97-17-71.1.
Solid waste management, §97-15-30.
  Unauthorized dumping, §97-15-30.
Street gangs, §97-44-13.
  Nuisance abatement.
    Unlawful use of private buildings, §97-44-15.

INSIGNIA.
False pretenses.
Unauthorized use of membership buttons, insignia, etc., §97-19-43.

INSPECTIONS.
Charitable bingo.
Enforcement powers, §97-33-109.
Metal property purchases.
Scrap metal dealers or other purchasers, §97-17-71.
Scrap metal dealers or other purchasers.
Metal property purchases, §97-17-71.
Tobacco sales to underage persons.
Unannounced inspections, §97-32-21.

INSUFFICIENT FUNDS.
Bad checks.
General provisions, §§97-19-55 to 97-19-81.

INSURANCE AGENTS.
Acting for company not complying with law, §97-23-31.

INTELLECTUAL PROPERTY.
Computer crimes.
Offenses against intellectual property, §97-45-9.
Trademarks.
Forgery and counterfeiting, §§97-21-53 to 97-21-57.

INTENT.
Air piracy.
Assault and battery, §97-25-55.
Bad checks.
Presumption of fraudulent intent, §97-19-57.
Counterfeiting.
Possession of dies, plates, etc.
Intent to market imitation goods, §97-21-55.
Credit card fraud, §97-19-21.
Signing with intent to defraud, §97-19-19.
False pretenses, §§97-19-39, 97-19-41.
Producing child with intent to intercept inheritance, §97-19-45.
Forgery.
Intent to defraud, §97-21-27.
Negotiable instruments.
Forgery.
Making and uttering instrument in own name with intent to defraud, §97-21-29.

INTENT —Cont'd
Obtaining signature or thing of value with intent to defraud, §§97-19-39, 97-19-41.
Shoplifting.
Presumptions.
Intent to steal merchandise, §97-23-93.
Social security cards.
Use with intent to defraud, §97-19-85.

INTERFERENCE.
Lawful exercise of trade, §97-23-33.
Preventing employment by force or violence, §§97-23-39, 97-23-41.

INTERNET.
Computer crimes, §§97-45-1 to 97-45-33.
Gambling.
Internet sweepstakes cafes.
Prohibited, §97-33-8.
Online impersonation, §97-45-33.

INTERSTATE COMMERCE.
Metal property.
Transporting interstate.
Report to sheriff, records, §97-17-71.

INTERVENTION.
Forfeitures.
Trademarks and recording violations.
Civil forfeiture proceedings.
Attorney general, §97-21-101.
Racketeer influenced and corrupt organizations.
Attorney general, §97-43-9.
Trademarks and recording violations.
Civil forfeiture proceedings.
Attorney general, §97-21-101.

INTIMIDATION.
Air piracy, §97-25-55.
Disturbance in public place, §97-35-13.
Elections.
Intimidating elector to prevent voting, §97-13-39.
Intimidating elector to procure vote, §97-13-37.
Motor carriers and public utilities.
Obstructing or impeding by intimidation, §97-25-45.
Street gangs, §§97-44-1 to 97-44-19.

INTOXICATION.
Public intoxication, §97-29-47.

INTOXICATION —Cont'd

Railroad engineer or conductor, §97-25-13.

INVESTIGATIONS.

Charitable bingo.
  Enforcement powers, §97-33-109.

Computer crimes and identity theft, §97-45-23.
  Costs assessed against convicted defendant, §97-45-25.

Fantasy contests.
  Investigation of violation of provisions, §97-33-315.

Identity theft.
  Attorney general conducting investigations.
    Authority in conducting, §97-45-29.

J

JACKASSES.

Keeping in public view or permitting to run at large, §97-29-57.

JAILS.

Alcoholic beverages.
  Sale, possession, etc., §97-31-35.

Correctional employees.
  Sale, possession, etc., of alcoholic beverages, §97-31-35.

Guards.
  Sale, possession or distribution of alcoholic beverages, §97-31-35.

JOINDER OF OFFENSES.

Receiving stolen property and stealing.
  Not to be charged against single defendant in single jurisdiction, §97-17-70.

JOY RIDING, §§97-17-42, 97-17-61.

JUDGES.

Extortion.
  Collecting unauthorized fees, §97-11-33.

Gambling.
  Disciplinary action, §97-33-3.

Purposeful avoidance of knowledge of offense, §97-11-35.

JUDGMENTS AND DECREES.

Forgery.
  Record of court judgment, §97-21-45.

JURISDICTION.

Computer crimes and identity theft.
  Criminal action, §97-45-21.

Crimes and offenses.
  Natural parent of illegitimate children.
    Multiple births, §97-29-11.

Paternity proceedings.
  Prosecutions for multiple births, §97-29-11.

JUSTICE COURTS.

Firearms and other weapons.
  Judges.
    Persons permitted to carry deadly weapons, §97-37-7.

Judges.
  Firearms and other weapons.
    Persons permitted to carry deadly weapons, §97-37-7.

JUVENILE DELINQUENTS.

Firearms and other weapons.
  Possession of handgun by minor.
    Act of delinquency, §97-37-14.

JUVENILE OFFENDERS.

Arson.
  Places of worship.
    Eligibility for probation, §97-17-3.

Shoplifting, §§97-23-94, 97-23-94.1.

Tobacco sales to underage persons.
  General provisions, §§97-32-1 to 97-32-23.

K

KIDNAPPING.

RICO, §§97-43-1 to 97-43-11.

KINDERGARTEN.

Strip clubs.
  Location within certain distance of kindergarten, §97-29-65.

KNIGHTS OF PYTHIAS.

Unauthorized use of membership buttons, insignia, etc., §97-19-43.

L

LABELS.

Pharmacists and pharmacies.
  Patient medicines, §97-31-25.

LABOR AND EMPLOYMENT.

Racketeer influenced and corrupt organizations, §§97-43-1 to 97-43-11.

LABOR UNIONS.
Labor disputes.
  Preventing employment by force or violence, §§97-23-39, 97-23-41.
Mass picketing by union obstructing or interfering with right of access to business or residence, §97-23-109.
Picketing.
  Preventing employment by force or violence, §§97-23-39, 97-23-41.

LANDLORD AND TENANT.
Alcoholic beverage offenses.
  Shot houses, §§97-31-29, 97-31-31.
Enticing away lessee without written consent, §97-23-29.
Gambling.
  Building owners, less, etc.
    Permitting on premises, §97-33-13.

LARCENY, §§97-17-41 to 97-17-65.
Animal killed or wounded by train, §97-25-31.
Coin-operated devices, §97-17-68.
Consigned motor fuel, §§97-17-201 to 97-17-207.
  Defined, §97-17-201.
  Taking in violation of agreement, §97-17-205.
    Penalties, §97-17-207.
  Written consignment agreement, requirements, §97-17-203.
Credit card theft, §§97-19-13, 97-19-29.
Criminal conversion, §97-17-61.
Dogs, §97-17-51.
Electric power lines and facilities, §97-25-1.
Grand larceny.
  Conduct constituting, §97-17-41.
Lease or rental agreement, §97-17-64.
Livestock, §97-17-53.
Looting, §97-17-65.
Milk from cows, §97-17-55.
Motor fuels.
  Consigned motor fuel, §§97-17-201 to 97-17-207.
Motor vehicles, §§97-17-41, 97-17-42.
Negotiable instruments, §97-17-45.
Petit larceny.
  Conduct constituting, §97-17-43.
Possession of burglar's tools, §97-17-35.
Proof of value.
  Negotiable instruments and securities, §97-17-45.

LARCENY —Cont'd
Railroads.
  Stealing a train ride, §97-25-29.
  Stealing communications or signaling equipment, §97-25-35.
  Tickets, §97-25-11.
Rental property, §97-17-62.
Retail employees.
  Giving away merchandise without consent of merchant, §97-23-99.
Securities, §97-17-45.
Severing crops or other improvements, §97-17-47.
Shearing wool from dead sheep, §97-17-49.
Tampering with utility meters, §97-25-3.
Tenants in common, §97-17-63.
Timber, §97-17-59.
Trespass.
  Criminal conduct not amounting to larceny, §97-17-89.

LAW ENFORCEMENT OFFICERS.
Aircraft.
  Boarding aircraft with dangerous or deadly weapon, §97-25-55.
Animals trained and used to assist.
  Injuring or killing public service animals, §97-41-23.
Assault upon.
  Arson.
    Aggravated assault by injury-causing arson, §97-17-14.
Carrying firearms, §97-37-7.
Dogs.
  Injuring or killing public service animals, §97-41-23.
Failure to return known offenders, §97-11-35.
Firearms.
  Carrying firearms, §97-37-7.
Laser.
  Focusing laser at law enforcement officer. fire fighter or other emergency personnel, §97-35-49.
Metal property purchases.
  Scrap metal dealers or other purchasers.
    Inspections, §97-17-71.
Purposeful avoidance of knowledge of offense, §97-11-35.
Scrap metal dealers or other purchasers.
  Metal property purchases.
    Inspections, §97-17-71.

LAW ENFORCEMENT OFFICERS —Cont'd
Shooting near street or highway.
Self-defense exception, §97-15-13.

LEADER ANIMALS.
Harassment of leader dogs, §97-41-21.

LEASES.
Theft of rental property, §97-17-62.
Theft under lease or rental agreement, §97-17-64.

LEASES OF GOODS, UCC.
Theft under lease or rental agreement, §97-17-64.

LEVEES AND LEVEE DISTRICTS.
Crimes involving levees.
Cutting, mutilating or disfiguring, §97-15-23.
Damaging or injuring levees, §97-15-21.
Depositing woodpiles, refuse, garbage or dead animals on levees, §97-15-21.
Excavating dirt or sand, §97-15-23.
Fence, gate or cattle gap erected by district.
Breaking, destroying, leaving open, §97-15-21.
Hunting or target practice upon mainline structure, §97-15-27.
Maliciously cutting, breaking, injuring or destroying, §97-15-25.
Trespass, §97-15-23.
Hunting or shooting across streets and highways, §97-15-13.

LICENSES AND PERMITS.
Alcoholic beverage offenses.
Violation of permits requirements, §97-31-7.
Carrying deadly weapon.
Permit, §97-37-7.
Fantasy contests.
Licensure of operators offering contests within state, §97-33-307.
Disciplinary actions, §97-33-315.
Firearms and other weapons.
Permit to carry, §97-37-7.
Forgery, §97-21-35.
Practice of profession without license, §97-23-43.
Tobacco sales to underage persons.
Retail sales permits, §97-32-19.
Disciplinary action, §97-32-17.
Habitual violations, §97-32-5.

LICENSES AND PERMITS —Cont'd
Unlicensed practice of profession, §97-23-43.

LIENS.
Agricultural products.
Removing products from premises subject to lien, §97-17-73.
Cruelty to animals.
Animal medical and boarding costs, §97-41-2.
Removing personal property subject to lien, §§97-17-75, 97-17-77.

LIGHTHOUSES.
Destroying property, etc., §97-35-21.

LIMITATION OF ACTIONS.
Racketeer influenced and corrupt organizations.
Civil proceedings, §97-43-9.
Trademarks and recording violations.
Civil forfeiture proceedings, §97-21-101.

LITTERING.
Assessment for littering on highway with trash likely to cause fire, §97-15-29.
Beaches.
Breakable containers or injurious debris, §97-27-9.
Highways.
Littering with trash likely to cause fire, §97-15-29.
Tacks, glass, or other injurious material, §97-15-31.

LIVESTOCK.
Cruelty to animals, §§97-41-1 to 97-41-23.
Fraudulent conduct to obtain livestock.
Crime, §97-17-53.
Larceny.
Shearing wool from dead sheep, §97-17-49.
Stealing milk from cows, §97-17-55.
Milk cows.
Stealing milk from cows, §97-17-55.
Railroad offenses.
Driving livestock on track, §97-25-7.
Registering animal falsely, §97-19-49.
Shooting near dwelling house.
Causing damage to property, domesticated animal or livestock, §97-37-30.

LIVESTOCK —Cont'd
Shooting or hunting near highways.
  Lawful protection of livestock, §97-15-13.

LIVESTOCK AND ANIMAL DISEASES.
Burial of diseased animals, §97-27-3.
Exposing animal with infectious disease, §97-27-5.
Glanders or farcy exposure.
  Failure to report, §97-27-7.
Quarantine.
  Failure to confine and segregate diseased animals, §97-27-3.
  Glanders or farcy animals, §97-27-7.
Selling animal with infectious disease, §97-27-5.
Using animal with infectious disease, §97-27-5.

LOCAL GOVERNMENTS.
Forgery of public seal, §97-21-47.
Metal property purchases.
  Ordinances, authority to enact, §97-17-71.
Treasury warrants.
  Forgery, §§97-21-33, 97-21-61.

LOOTING, §97-17-65.
Dual prosecution for larceny or burglary, §97-17-65.

LORD'S SUPPER.
Religious exception to alcoholic beverage prohibition, §97-31-33.

LOTTERIES, §§97-33-31 to 97-33-49.
Advertising, §§97-33-33 to 97-33-37.
Agents.
  Acting as agent for lottery, §97-33-47.
Buying tickets, §97-33-41.
Minors.
  Gambling with minor, applicability to lotteries, §§97-33-21, 97-33-23.
Office pools, §97-33-31.
Office raffles, §97-33-49.
Putting on lottery, §97-33-31.
Raffles, §97-33-49.
Railroad companies, §97-33-43.
RICO, §§97-43-1 to 97-43-11.
Sale of tickets, §97-33-39.
Steamboats, §97-33-45.
Tickets, §§97-33-39, 97-33-41.

M

MAGAZINES.
Editorial staff.
  Failure to print names in publication, §97-23-35.

MAIL CARRIERS.
Firearms and other weapons.
  Possession of weapons on school property.
    Exception to prohibition, §97-37-17.

MAIL FRAUD, §97-19-83.

MALICIOUS MISCHIEF, §§97-17-39, 97-17-67.
Railroad cars, §97-25-27.
Trains, §97-25-27.

MANHOLE COVERS.
Scrap metal sales and purchases, prohibited acts, §97-17-71.

MARRIAGE.
Bigamous marriages, §§97-29-13, 97-29-15.
False personation.
  Personating another to marry, §97-19-33.

MASONS.
Unauthorized use of membership buttons, insignia, etc., §97-19-43.

MASS.
Disturbance of worship service, §97-35-17.

MASSAGE PARLORS.
Peeping Tom law, §97-29-61.

MEAT AND MEAT PRODUCTS.
Dead, diseased and unclean animals.
  Selling as human food, §97-27-19.
Selling meat of animal not slaughtered, §97-27-15.

MEDICAID.
Dual prosecutions, §97-19-71.

MEDICAID FRAUD.
Fraudulent devices and schemes to acquire medicaid, §97-19-71.
Restitution, §97-19-71.
RICO, §§97-43-1 to 97-43-11.

MEDICAL EXAMINERS.
Extortion.
Collecting unauthorized fees, §97-11-33.

MENTAL HEALTH.
Firearms and other weapons.
Discharge from court-ordered treatment.
Petition to remove firearm disability, §97-37-5.

METAL PROPERTY.
Air conditioner evaporator coils or condensers.
Sales for scrap, §97-17-71.2.
Defined, §97-17-71.
Interstate transportation of metal property, §97-17-71.
Scrap metal dealers.
Purchases, §§97-17-71 to 97-17-71.2.

METERS.
Public utilities.
Tampering with, §97-25-3.

MILITARY.
Elections.
Armed troops brought near election place, §97-13-29.
Firearms and other weapons.
Persons permitted to carry, §97-37-7.

MILITARY ORDER OF THE FOREIGN WARS OF THE UNITED STATES.
Unauthorized use of membership buttons, insignia, etc., §97-19-43.

MILK COWS.
Stealing milk from cows, §97-17-55.

MINES AND MINERALS.
Critical infrastructure trespass or impeding critical infrastructure, §97-25-59.

MINISTERS.
Alcoholic beverage exception to prohibition, §97-31-33.

MINORS.
Tobacco sales to underage persons, §§97-32-1 to 97-32-23.

MISSISSIPPI ADULT TOBACCO USE ON EDUCATIONAL PROPERTY ACT OF 2000, §§97-32-25 to 97-32-29.

MISSISSIPPI CHURCH PROTECTION ACT.
Security program to allow persons to carry firearms in church for protection of congregation.
Defense against charge of carrying deadly weapon, §97-37-9.

MISSISSIPPI DOG AND CAT PROTECTION LAW OF 2011, §97-41-16.

MISSISSIPPI STREET GANG ACT, §§97-44-1 to 97-44-19.

MOBILE PHONES.
Wrongful access to telecommunications messages by cellular phone, §97-25-49.

MODEL AIRPLANE GLUE.
Glue sniffing, §97-27-33.

MONEY.
Counterfeiting.
Currency or treasury notes of United States, §§97-21-13 to 97-21-17.
Uttering counterfeit currency, §§97-21-33, 97-21-59.

MONEY LAUNDERING, §97-23-101.

MOONSHINE, §§97-31-19 to 97-31-23.

MORTGAGES AND DEEDS OF TRUST.
False pretenses.
Selling property previously sold or encumbered, §97-19-51.
Fraud.
Residential mortgage fraud, §97-23-107.
Residential mortgage fraud, §97-23-107.

MOTION PICTURES.
Operating unauthorized audiovisual recording device in theater, §97-23-92.

MOTOR CARRIERS.
Conspiracy to impede, §97-25-43.
Obstructing or impeding by intimidation, force or violence, §97-25-45.

MOTOR VEHICLE GRAND LARCENY, §§97-17-41, 97-17-42.

MOTOR VEHICLES.
Bad checks.
  Transactions involving motor vehicles, §97-19-57.
Burglary, §97-17-33.
Catalytic converters.
  Scrap metal dealers.
    Metal property purchase transactions generally, §§97-17-71 to 97-17-71.2.
Criminal conversion, §97-17-61.
Grand larceny, §§97-17-41, 97-17-42.
Hydraulic brake fluid.
  Sale of inferior quality, §97-35-19.
Joy riding, §§97-17-42, 97-17-61.
Larceny, §§97-17-41, 97-17-42.
  Criminal conversion, §97-17-61.
Petit larceny.
  Leaving premises of establishment at which motor fuel dispensed without paying, §97-17-43.
Racketeer influenced and corrupt organizations.
  Seizure and forfeiture of property, §97-43-11.
Railroad offenses.
  Driving vehicle on track, §97-25-7.
Theft.
  Criminal conversion, §97-17-61.
  Grand larceny, §§97-17-41, 97-17-42.

MOTOR VEHICLE THEFT.
Grand larceny, §§97-17-41, 97-17-42.

MOTOR VEHICLE TITLING.
Racketeer influenced and corrupt organizations.
  Seizure and forfeiture of property, §97-43-11.

MOUNTAIN DEW, §§97-31-19 to 97-31-23.

MUNICIPALITIES.
Metal property purchases.
  Ordinances, authority to enact, §97-17-71.
Scrap metal dealers or other purchasers.
  Metal property purchases.
    Ordinances, authority to enact, §97-17-71.

MUSIC MACHINES.
Exception to gambling devices prohibition, §97-33-7.

N

NATURAL GAS.
Critical infrastructure trespass or impeding critical infrastructure, §97-25-59.

NAVIGABLE WATERS.
Obstructing waterways, §§97-15-43, 97-15-45.

NAVIGATION LIGHTS.
Extinguishing, etc., §97-35-21.

NECROPHILIA, §97-29-59.

NEGOTIABLE INSTRUMENTS.
Bad checks.
  Generally, §§97-19-55 to 97-19-81.
Counterfeit bank notes and other instruments, §§97-21-33, 97-21-37, 97-21-49.
False pretenses.
  Using false negotiable instrument, §97-19-41.
Forgery.
  Making and uttering instrument in own name with intent to defraud, §§97-21-29, 97-21-33.
  United States treasury notes, §§97-21-13, 97-21-33, 97-21-49.
Larceny, §97-17-45.

NEWBORNS.
Breast feeding.
  Breach of the peace.
    Exception, §97-35-15.
  Disorderly conduct.
    Exceptions, §97-35-7.
  Indecent exposure.
    Exceptions, §§97-29-31, 97-35-11.

NEWSPAPERS.
Editorial staff.
  Failure to print names in publication, §97-23-35.
Lotteries.
  Advertising prohibition, §§97-33-35, 97-33-37.

NICOTINE.
Alternative nicotine products.
  Distribution of alternative nicotine products to underage persons, §97-32-51.
    Educational property, sale or furnishing to underage person near, §97-32-52.

NITROGLYCERINE.
Unlawful possession of explosives, §97-37-23.

NITROGLYCERINE CAPS.
Unlawful possession of explosives, §97-37-23.

NOISE.
Disturbances.
  Explosives, noises or offensive conduct, §97-35-9.

NOTICE.
Bad checks.
  Return undelivered notice as evidence of intent to defraud, §97-19-57.
  Statement of reason for dishonor, §97-19-63.
  Statutory notice of unpaid check, §97-19-57.
  When notice not required, §97-19-61.
Credit card fraud.
  Revocation of credit card or credit device, §97-19-31.
Racketeer influenced and corrupt organizations.
  Seizure and forfeiture of property, §97-43-11.
Tobacco sales to underage persons.
  Attorney general notification of retailer violation, §97-32-5.

NUCLEAR SABOTAGE, §97-25-57.

NUDITY.
Strip clubs.
  Location within certain distance of church, school, kindergarten, or courthouse, §97-29-65.

NUISANCES.
Bridges.
  Failure to keep road, etc., in repair, §97-15-51.
Ferries.
  Failure to keep road, etc., in repair, §97-15-51.
Highways.
  Failure to keep road, etc., in repair, §97-15-51.
Streetgangs.
  Unlawful use of private buildings, §97-44-15.
Streets and alleys.
  Failure to keep road, etc., in repair, §97-15-51.

O

OBSCENITY AND PORNOGRAPHY, §§97-29-101 to 97-29-109.
Cable TV exemption, §97-29-107.
Conduct constituting, §97-29-101.
Definitions, §97-29-103.
Distribution of obscene materials or performances, §97-29-101.
Distribution of unlawful sexual devices, §97-29-105.
Exemption from prosecution.
  Professions and occupations, §97-29-107.
Penalties, §97-29-109.
Physician and psychologist exemption, §97-29-107.
Prosecutor's bond, §§97-29-101, 97-29-105.

OBSTRUCTING ACCESS TO EMERGENCY ASSISTANCE, §97-35-51.

OBSTRUCTING WATERWAYS, §§97-15-39 to 97-15-45.

OFFENSIVE LANGUAGE.
Disturbance in public place, §97-35-13.

OFFICE LOTTERIES, §97-33-31.

OFFICE RAFFLES, §97-33-49.

OLEOMARGARINE.
Labeling violation, §97-23-37.

ONLINE IMPERSONATION, §97-45-33.

ORAL SEX, §97-29-59.

ORGANIZED CRIME.
RICO, §§97-43-1 to 97-43-11.
Street gangs, §§97-44-1 to 97-44-19.

P

PARDONS.
Deadly weapons.
  Removal of prohibition against possession, §97-37-5.

PARENT AND CHILD.
Child labor.
  Enticing away minor without written consent of parent, §97-23-29.
False pretenses.
  Substituting child to deceive parent or guardian, §97-19-53.

PARENT AND CHILD —Cont'd
Firearms and other weapons.
  Parent permitting minor to possess, §97-37-15.
Illegitimate children.
  Misdemeanor, second or subsequent birth, §97-29-11.
Incest.
  Adultery and fornication prohibited, §97-29-5.
  Divorce.
    Divorced couple prohibited from cohabitation or copulation, §97-29-29.
  Marriage prohibited.
    Crime of incestuous marriage, §97-29-27.
Shoplifting.
  Recovery of civil damages from parents or guardians, §97-23-96.

PARKING.
Meters.
  Theft of coins, §97-17-68.

PARKING METERS.
Theft of coins, §97-17-68.

PAROLE.
Alcoholic beverages.
  Offenses.
    Ineligibility for parole, §97-31-35.

PARTIES.
Street gangs.
  Civil proceedings, §97-44-5.

PARTNERSHIPS.
Prostitution.
  Promoting prostitution.
    Punishment for corporations, partnerships, etc, §97-29-51.

PATERNITY PROCEEDINGS.
Jurisdiction over actions.
  Multiple births of illegitimate children, §97-29-11.
Multiple births of illegitimate children.
  Criminal jurisdiction, §97-29-11.
Venue of actions.
  Multiple births of illegitimate children, §97-29-11.

PATRIOTIC ORGANIZATIONS.
False pretenses.
  Unauthorized use of membership buttons, insignia, etc., §97-19-43.

PAWNBROKERS AND PAWNSHOPS.
Pirated recordings, contraband, §97-23-91.

PAY TELEPHONES.
Theft of coins, §97-17-68.

PEACE BONDS.
Dueling.
  Arrest of participants, §97-39-9.

PEDESTRIANS.
Interference with walkways, §97-35-23.
Sidewalks.
  Interference with walkways, §97-35-23.
  Littering with tacks, glass or other damaging objects, §97-15-31.

PEDIGREE.
False pretenses.
  Giving false pedigree, §97-19-49.

PEEPING TOM, §97-29-61.
Photographing or filming another without permission, §97-29-63.

PERSONAL PROPERTY.
Arson.
  Third degree arson.
    Burning personal property, §97-17-7.
False pretenses.
  Selling property previously sold or encumbered, §97-19-51.
Leases.
  Theft under lease or rental agreement, §97-17-64.
Liens.
  Removing personal property subject to lien, §§97-17-75, 97-17-77.
Racketeer influenced and corrupt organizations.
  Seizure and forfeiture of property, §97-43-11.

PERSONAL PROPERTY LEASES.
Theft under lease or rental agreement, §97-17-64.

PETITIONS.
Forfeitures.
  Trademarks and recordings violations.
    Civil forfeiture, §97-21-103.
Racketeer influenced and corrupt organizations.
  Seizure and forfeiture of property, §97-43-11.
Trademarks and recordings violations.
  Civil forfeiture, §97-21-103.

PETIT LARCENY, §97-17-43.

PETROLEUM AND PETROLEUM PRODUCTS.

Larceny of consigned motor fuel, §§97-17-201 to 97-17-207.

PETS.

Cruelty to animals, §§97-41-1 to 97-41-23.

Shooting near dwelling house.
  Causing damage to property, domesticated animal or livestock, §97-37-30.

PHANTOM-WARE.

Sales tax.
  Falsification of sales records.
    Automated sales suppression devices, zappers and phantom-ware programs, §97-23-111.

PHARMACISTS AND PHARMACIES.

Alcoholic beverage offenses.
  Exception for druggists, §97-31-33.
  Patient medicines, §97-31-25.
  Sale, §§97-31-37 to 97-31-45.

Labeling.
  Patient medicines, §97-31-25.

Patient medicines, §97-31-25.

Poisons, §§97-27-25 to 97-27-29.
  Regulated sales and gifts of poison, §97-27-21.

Sale of alcohol by druggists, §§97-31-37 to 97-31-45.
  Druggists filing fee permitted, §97-31-43.
  Medicinal purposes, §§97-31-37, 97-31-39.
  Patient medicines, §97-31-25.
  Penalty for violations, §97-31-45.
  Physician's certificate, §97-31-39.
  Reporting requirements, §97-31-43.
  Retail and wholesale sales permitted, §97-31-37.
  Wine for sacramental purposes, §97-31-41.

Unlicensed practice, §97-23-43.

PHOTOGRAPHS.

Peeping Tom law.
  Photographing or filming another without permission, §97-29-63.

PHYSICIANS AND SURGEONS.

Obscenity.
  Physician and psychologist exemption, §97-29-107.

PHYSICIANS AND SURGEONS —Cont'd

Unlicensed practice, §97-23-43.

PICKETING.

Mass picketing by union obstructing or interfering with right of access to business or residence, §97-23-109.

PIPELINES.

Critical infrastructure trespass or impeding critical infrastructure, §97-25-59.

PIRACY OF RECORDINGS, §§97-23-87 to 97-23-92.

Civil forfeiture.
  Aggrieved persons may institute proceedings, §97-21-101.
  Answer by owner of seized property.
    Filing, time, §97-21-103.
  Attorney general, district attorneys, state agencies may institute proceedings, §97-21-101.
  Burden of proof that property subject to forfeiture, §97-21-103.
  Disposition of forfeited property, §97-21-103.
  Hearing on petition for forfeiture, §97-21-103.
  Intervention by attorney general, §97-21-101.
  Other remedies not precluded, §97-21-101.
  Petition for forfeiture when property seized.
    Filing, venue, service, §97-21-103.
  Proceeds, disposition, §97-21-103.
  Prompt institution of proceedings.
    Property seized, §97-21-103.
  Property subject to forfeiture, §97-23-89.
  Record owner of property or holder of security interest.
    Service of petition on, §97-21-103.
  Seizure of property upon process, §97-21-101.
  Seizure of property without process, §97-21-101.
  Service of petition for forfeiture, §97-21-103.
  Statute of limitations, §97-21-101.
  Time period for commencing, §97-21-101.
  Who may institute proceedings, §97-21-101.

PIRACY OF RECORDINGS —Cont'd
Confiscation of illegal recordings, §97-23-91.
Motion picture theaters.
  Operating audiovisual recording device, §97-23-92.
Private causes of action, §97-23-91.
Sale or distribution without display of manufacturer information, §97-23-89.
Unauthorized copying or sale, §97-23-87.

PISTOLS.
Air pistols.
  Student possession of weapons.
    Exception to prohibition, §97-37-17.
Toy pistols.
  Sale prohibition, §97-37-33.

PLEADINGS.
Forgery, §97-21-35.
  Unauthorized use or signing of another's name, §97-21-51.
Racketeer influenced and corrupt organizations.
  Seizure and forfeiture of property, §97-43-11.
Street gangs.
  Civil proceedings, §97-44-7.

POISONS.
Arsenic, §§97-27-25 to 97-27-29.
  Failure to mix with soot or indigo, §97-27-25.
Druggists.
  Regulated sales and gifts of, §97-27-21.
Glue sniffing, §97-27-33.
Labeling violations, §§97-23-29, 97-27-23.
Sales to minors, §§97-27-31, 97-27-33.
Unlawful glue sales to minors, §97-27-33.
Use in embalming fluid, §97-27-27.
Violation of provisions, §97-27-29.

POLICE DOGS.
Injuring or killing public service animals, §97-41-23.

PORNOGRAPHY.
Obscenity generally, §§97-29-101 to 97-29-109.

POSSESSION OF BURGLAR'S TOOLS, §97-17-35.

POSTERS.
Lotteries.
  Advertising prohibition, §97-33-33.

PRESUMPTION OF DEATH.
Bigamy defense, §97-29-15.

PRESUMPTIONS.
Bad check.
  Fraudulent intent, §97-19-57.
Cruelty to animals.
  Guide, leader, hearing, service, support dog.
    Harassment, conduct constituting, §97-41-21.
Death.
  Bigamy defense, §97-29-15.
Guide, leader, hearing, service, support dog.
  Harassment, conduct constituting, §97-41-21.
Shoplifting.
  Intent to steal merchandise, §97-23-93.

PRINCIPAL AND INCOME LAW.
Trustees of state institutions.
  Incurring liability in excess of income, §97-11-51.

PRISONS AND PRISONERS.
Alcoholic beverages.
  Sale, possession, etc., §97-31-35.
Correctional officers.
  Diseases, criminal exposure to, §97-27-14.
  Sale, possession, etc., of alcoholic beverages, §97-31-35.
Diseases, criminal exposure of another to, §97-27-14.
Employees.
  Correctional officers.
    Alcoholic beverages, sale or possession, §97-31-35.
Endangerment by bodily substance, §97-27-14.

PRISON TERMS.
Adulterated and misbranded food, §97-27-1.
Adultery, §§97-29-1 to 97-29-9.
Advertising.
  Lotteries, §§97-33-33 to 97-33-37.
  Pulling down advertisements, §97-23-5.
Agents.
  Acting as agent for lottery, §97-33-47.
Air piracy, §97-25-55.
  Assault with intent to commit air piracy, §97-25-55.
Alcoholic beverage offenses.
  Consignment delivery of alcohol or wine.
    False affidavit, §97-31-15.

PRISON TERMS —Cont'd
Alcoholic beverage offenses —Cont'd
  Correctional facilities, §97-31-35.
  General penalty provision, §97-31-53.
  Ginger preparations, §97-31-11.
  Moonshining, §§97-31-21, 97-31-23.
  Refusal to testify after witness immunity, §97-31-51.
  Sale of alcohol by druggists, §97-31-45.
  Shot houses, §§97-31-27, 97-31-31.
Animal and livestock diseases.
  Selling diseased animals, §97-27-5.
Arson.
  Aggravated assault upon fire fighters, law enforcement officers or emergency medical personnel.
    Injury-causing arson, §97-17-14.
  First degree arson.
    Burning dwelling house or outbuilding, §97-17-1.
    Places of worship, §97-17-3.
  Fourth degree arson, §97-17-9.
  Insured property, §97-17-11.
  Second degree arson.
    Burning other buildings or structures, §97-17-5.
  Third degree arson, §97-17-7.
  Willfully or negligently firing woods, marsh, etc., §97-17-13.
Bad checks, §97-19-67.
Bigamy, §97-29-13.
Bioterrorism.
  Introduction of harmful substances, §97-27-12.
Bonds, surety.
  Approving worthless official bond, §97-11-9.
Boundary landmarks.
  Altering or destroying, §97-17-15.
Brands and marks.
  Saw-log brands.
    Altering or defacing, §97-17-17.
Bribery.
  Athletic contests, §97-29-17.
  Election bribery, §§97-13-1, 97-13-3.
  Highway commission members and employees, §97-15-3.
  Public or private officials, §§97-11-11, 97-11-13.
Burglary.
  Boats and other vessels, §97-17-33.
  Breaking inner door of dwelling by one lawfully on premises, §97-17-29.
  Breaking out of dwelling, §97-17-25.
  Home invasion, §97-17-23.

PRISON TERMS —Cont'd
Burglary —Cont'd
  Inhabited dwelling, §97-17-23.
  Motor vehicles, §97-17-33.
  Nighttime breaking while armed with deadly weapon, §97-17-23.
  Possession of burglar's tools, §97-17-35.
  Railroad cars, §97-17-33.
  Safecracking, §97-17-37.
Circuit court clerks.
  Refusal to send up certificate of appeal, §97-11-15.
Code of military justice.
  Commissioned officers.
    Resigning to evade obedience to lawful order, §97-11-39.
Coin-operated machines.
  Fraudulent use or sale of slug, token or other device, §97-21-11.
Commission of felony while using firearm.
  Enhanced penalties, §97-37-37.
Communicable diseases.
  Importation to spread by inoculation, §97-27-11.
  Medical certification to travel abroad.
    Failure of smallpox patient to obtain, §97-27-13.
Computer crimes and identity theft.
  Computer equipment, offenses against, §97-45-7.
  Computer fraud, §97-45-3.
  Computer users, offenses against, §97-45-5.
  Cyberstalking, §97-45-15.
  Identity theft, §97-45-19.
  Intellectual property, offenses against, §97-45-9.
  Online impersonation, §97-45-33.
  Posting of messages through electronic media.
    Purpose of causing injury to person, §97-45-17.
Computer fraud, §97-45-3.
Conspiracy.
  Highway commission members and employees.
    Conspiracy to violate contracts and defraud state, §97-15-5.
  Highway contractors.
    Collusion to raise prices, §97-15-11.
    Conspiracy to violate contracts and defraud state, §97-15-5.
  Impeding railroads, public utilities and carriers, §97-25-43.

PRISON TERMS —Cont'd
Conspiracy —Cont'd
  Preventing employment by force or violence, §97-23-41.
  Unauthorized dumping of solid wastes, §97-15-30.
  Unlawful restraint of trade, §97-23-85.
Cotton.
  Fraudulent packing, §97-23-7.
Counterfeiting.
  Credit cards, §§97-19-25, 97-19-29.
  Social security cards, §97-19-85.
Credit card forgery, §§97-19-17, 97-19-29.
Credit card fraud.
  Controlling card as security for debt, §§97-19-15, 97-19-29.
  Fraudulent use of numbers, §97-19-85.
  Furnishing things of value on forged or unlawfully obtained card, §§97-19-23, 97-19-29.
  Possession of incomplete cards or devices for counterfeiting, §§97-19-25, 97-19-29.
  Procuring issuance by false statements, §§97-19-11, 97-19-29.
  Signing with intent to defraud, §§97-19-19, 97-19-29.
  Use of card with intent to defraud, §97-19-21.
  Use of expired or revoked card with intent to defraud, §97-19-31.
Credit card theft, §§97-19-13, 97-19-29.
  Using scanner or reencoder to capture information, §§97-19-32, 97-45-31.
Criminal conversion, §97-17-61.
Cruelty to animals.
  General penalty provision, §97-41-13.
  Livestock.
    Maliciously or mischievously injuring, §97-41-15.
  Poisoning animals, §97-41-17.
  Public service animals.
    Injury and killing of, §97-41-23.
Dead bodies, §§97-29-19 to 97-29-23.
  Buying or receiving, §97-29-21.
  Disinterment for sale or wantonness, §97-29-19.
  Opening graves for unlawful purposes, §97-29-23.
Desecration of cemetery, §97-29-25.
Diseases, criminal exposure to, §97-27-14.
Disorderly conduct.
  Failure to comply with law enforcement request, §97-35-7.

PRISON TERMS —Cont'd
Disorderly conduct —Cont'd
  Interference with business, customers, invitees, etc., §97-35-5.
  Public buses, §97-35-1.
Disturbances, §§97-35-11 to 97-35-18.
Dog and cat protection law of 2011.
  Violations, §97-41-16.
Dog fights, §97-41-19.
  Intentionally conducting fight between canine and hog, §97-41-18.
Dueling, §§97-39-1, 97-39-3.
  Egging on a fight, §97-39-11.
Election offenses.
  Armed troops brought near election place, §97-13-29.
  Ballot boxes, §§97-13-5, 97-13-7.
  Ballots, §§97-13-9, 97-13-13.
    False statement as to inability to mark, or marking to identify voter, §97-13-45.
    Unlawfully showing marked ballot to another, §97-13-45.
  Bribery, §§97-13-1, 97-13-3.
  Corrupt conduct, etc., by election official, §97-13-19.
  Direct recording electronic voting equipment (DRE).
    Tampering with, damaging, preventing correct operation, §97-13-43.
  Disturbing election, §97-13-21.
  Failure to make return of votes cast, §97-13-23.
  False entry in statewide management system or poll book, §97-13-41.
  Intimidating, boycotting, etc., §§97-13-37, 97-13-39.
  Limitations on political contributions, §§97-13-15, 97-13-17.
  Multiple voting, §97-13-36.
  Voting, §§97-13-31 to 97-13-36.
Embezzlement, §§97-23-19 to 97-23-27.
  Agents, fiduciaries, etc., §97-23-19.
  Buying or receiving embezzled goods, §97-23-23.
  Converting property to own use, §97-11-25.
  Evidence of debt negotiable by delivery but not delivered, §97-23-21.
  Failure to deliver money, etc., to successor, §97-11-27.
  False account entries, §97-11-29.
  Fraud committed in public office, §97-11-31.

PRISON TERMS —Cont'd
Embezzlement —Cont'd
  Property held in trust or received on contract, §97-23-25.
  Railroad tickets, §97-25-9.
Endangerment by bodily substance, §97-27-14.
Explosives.
  False report of placing, §97-37-21.
  Unlawful possession of explosives, §97-37-23.
  Unlawful use, §97-37-25.
Extortion.
  Collecting unauthorized fees, §97-11-33.
False fire alarm, §97-35-45.
False personation, §97-19-33.
  Masquerading as deaf person, §97-19-37.
False pretenses.
  Insolvent bank receiving deposits, §97-19-47.
  Obtaining signature or thing of value with intent to defraud, §§97-19-39, 97-19-41.
  Patriotic and fraternal organizations.
    Unauthorized use of membership buttons, insignia, etc., §97-19-43.
  Producing child with intent to intercept inheritance, §97-19-45.
  Registering false pedigree, §97-19-49.
  Substituting child to deceive parent or guardian, §97-19-53.
False reporting of crime, §97-35-47.
Felons.
  Failure to register, §97-35-27.
Firearms and other weapons.
  Aiding or encouraging minor to possess, §97-37-17.
  Carrying while concealed, §97-37-1.
  Commission of felony while using firearm.
    Enhanced penalties, §97-37-37.
  Exhibiting in threatening manner, §97-37-19.
  Honesty in purchasing firearms act.
    Transfer of firearm in violation of law, soliciting, enticing or encouraging, §97-37-105.
  Parent or guardian permitting minor to possess, §97-37-15.
  Possession by minor or intoxicated person, §97-37-13.
  Shooting into dwelling house, §97-37-29.

PRISON TERMS —Cont'd
Firearms and other weapons —Cont'd
  Shooting near dwelling house.
    Causing damage to property, domesticated animal or livestock, §97-37-30.
  Silencers on firearms, §97-37-31.
  Stolen firearms, §97-37-35.
  Unlawful possession by convicted felon, §97-37-5.
  Use or attempt to use, §97-37-1.
Fireworks.
  Unlawful explosion, §97-37-27.
Food sales.
  Sale of dead, diseased and unclean animals, §97-27-19.
  Unwholesome bread or drink, §97-27-15.
  Unwholesome flour and other provisions, §97-27-17.
Forgery, §97-21-33.
  Credit card forgery, §§97-19-17, 97-19-29.
Fraud and deceit.
  Computer fraud, §97-45-3.
  Home repair fraud, §97-23-103.
  State or federally funded assistance programs, §97-19-71.
Gambling.
  Betting, gaming or wagering generally, §97-33-1.
  Betting on horse or yacht race, or shooting match, §97-33-27.
  Betting with minor, §§97-33-21, 97-33-23.
  Building owners, less, etc.
    Permitting on premises, §97-33-13.
  Club associations, §97-33-11.
  Gambling devices prohibition, §97-33-7.
  Internet sweepstakes cafes, §97-33-8.
  Judicial and law enforcement officers, §97-33-3.
  Keeping games or gaming tables, §97-33-9.
  Pool-selling, §97-33-25.
  Resisting seizure of forfeited money and appliances, §97-33-19.
Glue sniffing, §97-27-33.
Highway contractors.
  Collusion to raise prices, §97-15-11.
Highways.
  Obstructing or injuring plank-road or covered road, §97-15-35.

PRISON TERMS —Cont'd
Home invasion, §97-17-23.
Home repair fraud, §97-23-103.
Hunting.
  Hunting or shooting near street or highway, §97-15-13.
Identification.
  Fraudulent use of identifying information, §97-19-85.
Incest.
  Cohabitation or copulation by divorced persons, §97-29-29.
Indecent exposure, §97-29-31.
Insurance agents.
  Acting for company not complying with law, §97-23-31.
Interference with lawful exercise of trade, §97-23-33.
Intimidation.
  Electors, §§97-13-37, 97-13-39.
Introduction of harmful substances, §97-27-12.
Labor disputes.
  Preventing employment by force or violence, §§97-23-39, 97-23-41.
Larceny.
  Coin-operated devices, §97-17-68.
  Criminal conversion, §97-17-61.
  Dogs, §97-17-51.
  Livestock, §97-17-53.
  Motor vehicle grand larceny, §97-17-42.
  Petit larceny, §97-17-43.
  Rental property, §97-17-62.
  Retail employee giving away merchandise without consent of merchant, §97-23-99.
  Shearing wool from dead sheep, §97-17-49.
  Stealing milk from cows, §97-17-55.
  Telegraph and telephone fixtures, §97-25-53.
  Theft under lease or rental agreement, §97-17-64.
  Timber, §97-17-59.
Levees.
  Disfiguring, etc., §97-15-23.
  Excavating dirt or sand on right-of-way, §97-15-23.
  Maliciously cutting, destroying, etc., §97-15-25.
Liens.
  Removing agricultural products subject to lien from premises, §97-17-73.

PRISON TERMS —Cont'd
Liens —Cont'd
  Removing personal property subject to lien, §§97-17-75, 97-17-77.
Lighthouses.
  Destroying, etc., property, §97-35-21.
Livestock brands.
  Registering animal falsely, §97-19-49.
Looting, §97-17-65.
Lotteries.
  Acting as agent for lottery, §97-33-47.
  Advertising, §§97-33-33 to 97-33-37.
  Putting on lottery, §97-33-31.
  Raffles, §97-33-49.
  Sale of tickets, §§97-33-39, 97-33-41.
Mail fraud, §97-19-83.
Meat and meat products.
  Selling meat of animal not slaughtered, §97-27-15.
Medicaid.
  Fraud.
    Fraudulent devices or schemes to acquire medicaid, §97-19-71.
Money laundering, §97-23-101.
Moonshining, §§97-31-21, 97-31-23.
Mortgages.
  Residential mortgage fraud, §97-23-107.
Motion pictures.
  Operating unauthorized audiovisual recording device, §97-23-92.
Motor carriers.
  Conspiracy to impede, §97-25-43.
  Obstructing or impeding by intimidation, force or violence, §97-25-45.
  Wilfully shooting or throwing at, §97-25-47.
Navigable waters.
  Obstructing waterways, §§97-15-43, 97-15-45.
Navigation lights.
  Extinguishing, etc., §97-35-21.
Nuclear sabotage, §97-25-57.
Obscenity, §97-29-109.
Obstructing access to emergency assistance, §97-35-51.
Oleomargarine and other imitation food.
  Labeling violation, §97-23-37.
Online impersonation, §97-45-33.
Organized theft or fraud enterprise, §97-43-3.1.
Parents of illegitimate children.
  Multiple births, §97-29-11.

PRISON TERMS —Cont'd
Petit larceny, §97-17-43.
Photographing or filming another without permission where there is expectation of privacy, §97-29-63.
Picketing.
  Mass picketing by union obstructing or interfering with right of access to business or residence, §97-23-109.
Piracy of recordings, §§97-23-87, 97-23-89.
  Motion pictures.
    Operating unauthorized audiovisual recording device, §97-23-92.
Poisons.
  Arsenic, §§97-27-25 to 97-27-29.
  Labeling and registration, §§97-27-23, 97-27-29.
  Unlawful glue sales to minors, §97-27-33.
Polygamy.
  Teaching doctrine, §97-29-43.
Possession of dies, plates, etc.
  Intent to market imitation goods, §97-21-55.
Professions and occupations.
  Unlicensed practice, §97-23-43.
Prostitution, §§97-29-49, 97-29-51.
Public contracts.
  Offer of inducements to influence award of contract, §97-11-53.
Public drunkenness, §97-29-47.
Public officers and employees.
  Elected officials exercising duties without oath of office or giving bond, §97-11-41.
  Offer of inducements to influence accomplishment of official act, §97-11-53.
  Railroad fares.
    Reduced fare and free pass violations, §97-11-43.
Public profanity, §97-29-47.
Public records.
  Alteration of records, §97-11-1.
Public utilities.
  Conspiracy to impede, §97-25-43.
  Obstructing or impeding by intimidation, force or violence, §97-25-45.
Racketeer influenced and corrupt organizations, §97-43-7.
Raffles, §97-33-49.
Railroad offenses.
  Conspiracy to impede trains, §97-25-43.

PRISON TERMS —Cont'd
Railroad offenses —Cont'd
  Derailing cars, §97-25-23.
  Embezzlement of tickets, §97-25-9.
  Failure of locomotive to stop before crossing track of another company, §97-25-19.
  Intoxication of engineer or conductor, §97-25-13.
  Jumping on or off cars in motion, §97-25-15.
  Leaving switch open or improperly placed, §97-25-17.
  Obstructing or impeding by intimidation, force or violence, §97-25-45.
  Obstructing or injuring trains, §§97-25-21, 97-25-23.
  Seizing and running locomotive, §97-25-25.
  Signaling or unlawfully interfering with train, §97-25-27.
  Stealing a ride, §97-25-29.
  Stealing or interfering with communications or signaling equipment, §97-25-35.
  Stopping or standing at crossing, §97-25-37.
  Uncoupling locomotives and cars, §97-25-39.
  Wilfully shooting from or on moving train, §97-25-41.
  Wilfully shooting or throwing at trains, §97-25-47.
Receiving stolen property, §97-17-70.
Rental storage batteries, §§97-23-55 to 97-23-61.
Residential mortgage fraud, §97-23-107.
Restraint of trade.
  Threats or coercion to prevent lawful conduct of business, §97-23-83.
Retail sales receipts.
  Falsely using or producing, §97-23-105.
Safecracking, §97-17-37.
Sales tax.
  Falsification of sales records.
    Automated sales suppression devices, zappers and phantom-ware programs, §97-23-111.
Seduction, §97-29-55.
Shooting into dwelling house, §97-37-29.

PRISON TERMS —Cont'd
Shooting near dwelling house.
  Causing damage to property, domesticated animal or livestock, §97-37-30.
Shoplifting, §§97-23-93, 97-23-94.
  Theft detection devices.
    Removal and shielding devices, §97-23-93.1.
Silencers on firearms, §97-37-31.
Social security numbers.
  Fraudulent use, §97-19-85.
Sodomy, §97-29-59.
Solid wastes.
  Unauthorized dumping, §97-15-30.
Stolen firearms, §97-37-35.
Storage batteries, §§97-23-55 to 97-23-61.
Streetgangs.
  Penalties for criminal activity, §97-44-19.
Supplemental nutritional assistance program (SNAP).
  Fraudulent devices or schemes to acquire benefits, §97-19-71.
Tax collectors.
  Collecting privilege tax without issuing license, §97-11-49.
  Failure to complete duplicate tax receipts, §97-11-45.
Telephone and telegraph companies.
  Failure to dispatch governmental messages, §97-25-51.
  Injuring or destroying lines, §97-25-53.
  Interrupting communications, §97-25-53.
  Stealing or destroying fixtures, §97-25-53.
  Wrongful access to telecommunications messages, §97-25-49.
Telephone profanity, §97-29-45.
Terrorism.
  Introduction of harmful substances, §97-27-12.
Theft of telecommunication services, §97-25-54.
Tobacco sales to underage persons, §97-32-5.
Toy pistols.
  Unlawful sales, §97-37-33.
Trees and timber.
  Boxing pine trees, §97-17-79.
  Cutting or rafting upon lands of another, §97-17-81.
  Injuring or destroying shade or ornamental trees, §97-17-83.

PRISON TERMS —Cont'd
Trees and timber —Cont'd
  Saw-log brands.
    Altering or defacing, §97-17-17.
Trespass.
  Airports.
    Air operations or sterile areas, §97-17-87.
  Customer or patron.
    Refusal to leave premises upon request, §97-23-17.
  Destruction or carrying away of vegetation, etc., §97-17-89.
  Entering lands of another without permission, §97-17-93.
  Entry on premises where dangerous devices are manufactured, etc., §97-17-95.
  Going upon premises of another after being forbidden to do so, §97-17-97.
  Inciting or soliciting another to trespass, §97-17-99.
  Remaining on premises when asked to leave, §97-17-97.
  Wilful or malicious trespass, §97-17-87.
Trusts and trustees.
  Trustees of state institutions.
    Incurring liability in excess of income, §97-11-51.
Universal product codes.
  Falsely using or producing, §97-23-105.
Unnatural intercourse, §97-29-59.
Vandalism.
  Cemetery property, §97-17-39.
  Churches, §97-17-39.
  Disfiguring, etc., levees, §97-15-23.
  Highway signs and signals, §§97-15-1, 97-15-13.
  Lighthouse property, §97-35-21.
  Public buildings, §97-17-39.
  School buildings, §97-17-39.
Voter registration, §§97-13-25, 97-13-27.
Voyeurism, §97-29-61.
Waters and watercourses.
  Obstructing watercourses.
    Felling tree or bush into stream, §§97-15-39, 97-15-41.
Weapons of mass destruction.
  False reports of placing, §97-37-21.
  Unlawful use, §97-37-25.
Wire fraud, §97-19-83.

PRIVACY.
Peeping Tom law.
  Spying on persons in area with reasonable expectation of privacy, §97-29-61.
Photographing or filming another without permission where there is expectation of privacy, §97-29-63.

PRIVILEGE TAXES.
Collecting tax without issuing license, §97-11-49.
Fantasy contests, §97-33-317.
Licenses.
  Collecting tax without issuing license, §97-11-49.

PROBABLE CAUSE.
Cruelty to animals.
  Hearing on seizure, §97-41-2.

PROBATION.
Alcoholic beverage offenses.
  Ineligibility for probation, §97-31-35.
Arson.
  Places of worship.
    Juvenile offenders, §97-17-3.
Probation officers.
  Persons permitted to carry deadly weapons, §97-37-7.

PROFANITY.
Disturbance by abusive language, §97-35-11.
Public buses, §97-35-1.
Public profanity, §97-29-47.
Telephone profanity, §97-29-45.

PROFESSIONS AND OCCUPATIONS.
Unlicensed practice of profession, §97-23-43.

PROFITS FROM CRIME.
Racketeer influenced and corrupt organizations, §97-43-5.

PROSTITUTION.
Conduct constituting, §97-29-49.
Human trafficking.
  Immunity from prosecution for acts resulting from being a trafficked person, §97-29-49.
  Promoting prostitution.
    Trafficked person accused.
      Mitigating circumstance, §97-29-51.
Minors.
  Procurement of services of minor, §97-29-51.
  Promoting prostitution by minor, §97-29-51.
  Taken into custody for prostitution.
    Reporting by law enforcement officer, §97-29-49.
Procuring females as prostitutes, §97-29-51.
Procuring services of prostitute, §97-29-51.
Promoting prostitution, §97-29-51.
RICO, §§97-43-1 to 97-43-11.
Soliciting for prostitution, §97-29-51.

PUBLIC BUILDINGS.
Vandalism, §97-17-39.

PUBLIC CONTRACTS.
Highway contractors.
  Conspiracy to violate contracts and defraud state, §97-15-5.

PUBLIC DEFENDERS.
Firearms.
  Carrying, §97-37-7.

PUBLIC DRUNKENNESS, §97-29-47.
Buses, §97-35-1.

PUBLIC INTOXICATION, §97-29-47.
Buses, §97-35-1.

PUBLIC OFFICERS AND EMPLOYEES.
Disqualification from holding office.
  Acceptance of inducements to accomplish official acts, §97-11-53.
Drunkenness in office, §97-11-23.
Embezzlement.
  Converting property to own use, §97-11-25.
  Failure to deliver money, etc., to successor, §97-11-27.
  False account entries, §97-11-29.
  Loan of public funds, §97-11-29.
Railroad fares.
  Reduced fare and free pass prohibition, §97-11-43.
Removal from office.
  Alcoholic beverage control officers.
    Consumption of confiscated liquor, §97-31-19.
  Attorney general.
    Advising and defending criminal defendants, §97-11-3.
    Gambling, §97-33-3.
  Constables.
    Gambling, §97-33-3.

PUBLIC OFFICERS AND EMPLOYEES —Cont'd
Removal from office —Cont'd
  District attorneys.
    Advising or defending criminal defendants, §97-11-3.
  Drunkenness in office, §97-11-23.
  Extortion.
    Collecting unauthorized fees, §97-11-33.
  Failure to return known offenders, §97-11-35.
  Judges.
    Gambling, §97-33-3.
  Public officers and employees.
    Drunkenness in office, §97-11-23.
  Purposeful avoidance of knowledge of offense, §97-11-35.
  Sheriffs.
    Gambling, §97-33-3.
  Tax collectors.
    Collecting privilege tax without issuing license, §97-11-49.
    Failure to make settlement, §97-11-47.
  Trustees of state institutions.
    Incurring liability in excess of income, §97-11-51.

PUBLIC PROFANITY, §§97-29-45, 97-29-47.
Disturbance by abusive language, §97-35-11.
Public buses, §97-35-1.

PUBLIC SERVICE ANIMALS.
Defined, §97-41-23.
Injuring or killing, §97-41-23.

PUBLIC UTILITIES.
Access covers.
  Scrap metal sales and purchases, prohibited acts, §97-17-71.
Conspiracy to impede, §97-25-43.
Critical infrastructure trespass or impeding critical infrastructure, §97-25-59.
Manhole covers.
  Scrap metal sales and purchases, prohibited acts, §97-17-71.
Meters.
  Tampering with, §97-25-3.
Obstructing or impeding by intimidation, force or violence, §97-25-45.

PULL-TABS.
Charitable bingo, §97-33-77.

R

RABBIS.
Alcoholic beverage exception to prohibition, §97-31-33.

RACING.
Horse racing.
  Betting prohibition, §97-33-27.

RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS, §§97-43-1 to 97-43-11.
Civil forfeiture of property, §§97-43-9, 97-43-11.
Civil proceedings, §97-43-9.
Definitions, §97-43-3.
Organized theft or fraud enterprise, §97-43-3.1.
Penalties, §97-43-7.
Prohibited activities, §97-43-5.
Racketeering activity, defined, §97-43-3.
Seizure and forfeiture of property, §§97-43-9, 97-43-11.
Title of act, §97-43-1.

RADIATION CONTROL.
Introduction of harmful substances, §§97-27-10 to 97-27-12.
Terrorism.
  Introduction of harmful substances, §§97-27-10 to 97-27-12.

RAFFLES, §97-33-49.

RAILROAD DEPOTS.
Fireworks.
  Unlawful to explode, §97-37-27.

RAILROAD OFFENSES, §§97-25-5 to 97-25-47.
Animals killed or wounded by trains.
  Disposition before report made, §97-25-33.
  Stealing, §97-25-31.
Boarding without ticket, §97-25-29.
Bridges.
  Vandalism, §97-25-4.
Burglary, railroad car, §97-17-33.
Cattle-gaps.
  Destroying, §97-25-5.
Communications or signaling equipment.
  Stealing or interfering, §97-25-35.
Conductors.
  Intoxication, §97-25-13.

RAILROAD OFFENSES —Cont'd
Conspiracy to impede motor carrier, §97-25-43.
Crossing-signs.
  Destroying, §97-25-5.
  Vandalism, §97-25-4.
Derailing cars, §97-25-23.
  Obstructing or injuring, §97-25-23.
Dumping trash on right-of-way, §97-25-4.
Engineers.
  Intoxication, §97-25-13.
Firearms.
  Wilfully shooting from or on moving train, §97-25-47.
Freight trains.
  Boarding or disembarking from moving train, §97-25-4.
Gates.
  Destroying, §97-25-5.
Injuring railroad, §§97-25-4, 97-25-21.
Jumping on or off cars in motion, §97-25-15.
  Freight trains, §97-25-4.
Littering on right-of-way, §97-25-4.
Locomotives.
  Entering or crossing track of another company.
    Failure to come to full stop, §97-25-19.
  Seizing and running, §97-25-25.
  Uncoupling locomotive and cars, §97-25-39.
Obstructing or impeding motor carrier, §§97-25-43, 97-25-45.
Obstructing or injuring trains, §§97-25-4, 97-25-21, 97-25-23.
Property.
  Offenses committed on railroad property, §97-25-4.
Railroad crossings.
  Destroying, §97-25-25.
  Stopping or standing at crossing, §97-25-37.
Signaling or unlawful interfering with train, §97-25-27.
Signals.
  Vandalism, §97-25-4.
Stealing a ride, §97-25-29.
  Boarding or disembarking from moving freight trains, §97-25-4.
Switches.
  Leaving open or improperly placed, §97-25-17.
  Vandalism, §97-25-4.

RAILROAD OFFENSES —Cont'd
Tailgating, §97-25-15.
Tickets.
  Embezzlement of, §97-25-9.
  Stealing, §97-25-11.
Tracks.
  Driving vehicle or livestock on track, §97-25-7.
  Locomotive entering or crossing track of another company.
    Failure to come to full stop, §97-25-19.
Vandalism, §97-25-4.
Warning-signals.
  Destroying, §97-25-5.

RAILROADS.
Animals killed or injured by railroad.
  Disposing of before report made, §97-25-33.
  Stealing, §97-25-31.
Boarding without ticket, §97-25-29.
Burglary.
  Railroad car, §97-17-33.
Cattle-gaps, destroying, §97-25-5.
Communications or signaling equipment.
  Stealing or interfering, §97-25-35.
Conductors.
  Intoxication, §97-25-13.
Conspiracy to impede motor carrier, §97-25-43.
Crimes and offenses.
  General provisions, §§97-25-5 to 97-25-47.
Depots.
  Fireworks.
    Unlawful to explode, §97-37-27.
Derailing, §97-25-23.
Embezzling tickets, §97-25-9.
Engineers.
  Intoxication, §97-25-13.
Injuring railroad, §97-25-21.
Jumping on or off cars in motion, §97-25-15.
Lotteries.
  Sale of lottery tickets, §97-33-43.
Public officers and employees.
  Reduced fare and free pass prohibition, §97-11-43.
Stealing ride, §97-25-29.
Stealing tickets, §97-25-11.
Tickets.
  Falsely making, altering, counterfeiting or forging, §§97-21-39 to 97-21-43.

RAILROADS —Cont'd
Uncoupling locomotive or cars, §97-25-39.
Vandalism.
  Railroad crossing signs or flasher signal, §97-15-1.

RAILROAD SPECIAL AGENTS.
Firearms or other weapons.
  Carrying, §97-37-7.

RAILROAD TICKETS.
Embezzlement, §97-25-9.
Forgery and counterfeiting, §§97-21-39 to 97-21-43.
  Falsely making, altering, counterfeiting or forging.
    Guilty of forgery, §97-21-41.
  Possession of forged or altered tickets.
    Guilty of forgery, §97-21-43.
  Railroad passenger ticket defined, §97-21-39.
Larceny, §97-25-11.

RAILROAD TRACK MATERIALS.
Defined, §97-17-71.
Scrap metal dealers or other purchasers.
  Purchase transactions, §§97-17-71 to 97-17-71.2.

REAL PROPERTY.
Arson.
  General provisions, §§97-17-1 to 97-17-14.
False pretenses.
  Selling property previously sold or encumbered, §97-19-51.
Racketeer influenced and corrupt organizations.
  Seizure and forfeiture of property, §97-43-11.
Shooting or hunting near highways.
  Lawful protection of livestock, §97-15-13.

RECEIVING STOLEN PROPERTY, §97-17-70.
Credit cards.
  Receipt of things of value in violation of law, §97-19-27.
Embezzled goods, §97-23-23.
Firearms, §97-37-35.
Metal property, §97-17-71.
Scrap metal dealers and other purchasers.
  Purchase transactions, §§97-17-71 to 97-17-71.2.

RECORD PIRACY, §§97-23-87 to 97-23-92.
Civil forfeiture, §§97-21-101, 97-21-103.

RECORDS.
Alteration of records, §97-11-1.
Charitable bingo.
  Manufacturers of supplies and equipment, §97-33-79.
Metal property purchases.
  Scrap metal dealers or other purchasers, §97-17-71.
Scrap metal dealers or other purchasers.
  Metal property purchases, §97-17-71.

REFINERIES.
Critical infrastructure trespass or impeding critical infrastructure, §97-25-59.

REGISTRATION.
Scrap metal dealers, §97-17-71.1.

RELIGION.
Arson upon places of worship, §97-17-3.
Church protection act.
  Security program to allow persons to carry firearms in church for protection of congregation.
    Defense against charge of carrying deadly weapon, §97-37-9.
Mississippi church protection act.
  Security program to allow persons to carry firearms in church for protection of congregation.
    Defense against charge of carrying deadly weapon, §97-37-9.
Petit larceny of places of worship, §97-17-43.
Theft of property from place of worship.
  Grand larceny, §97-17-41.
Vandalism of places of worship, §97-17-39.

RELIGIOUS ORGANIZATIONS.
Alcoholic beverage exception to prohibition, §97-31-33.
Arson upon places of worship, §97-17-3.
Disturbance of worship service, §97-35-17.
Grand larceny, §97-17-41.
Petit larceny, §97-17-43.
Vandalism, §97-17-39.

REMOVAL FROM OFFICE.
Alcoholic beverage control officers.
  Consumption of confiscated liquor, §97-31-19.
Attorney general.
  Advising and defending criminal defendants, §97-11-3.
  Gambling, §97-33-3.
Constables.
  Gambling, §97-33-3.
District attorneys.
  Advising or defending criminal defendants, §97-11-3.
Drunkenness in office, §97-11-23.
Extortion.
  Collecting unauthorized fees, §97-11-33.
Failure to return known offenders, §97-11-35.
Judges.
  Gambling, §97-33-3.
Purposeful avoidance of knowledge of offense, §97-11-35.
Sheriffs.
  Gambling, §97-33-3.
Tax collectors.
  Collecting privilege tax without issuing license, §97-11-49.
  Failure to make settlement, §97-11-47.
Trustees of state institutions.
  Incurring liability in excess of income, §97-11-51.

RENTAL-PURCHASE AGREEMENTS.
Theft under lease or rental agreement, §97-17-64.

RENTAL STORAGE BATTERIES, §§97-23-55 to 97-23-61.
Defacing, §97-23-55.
Penalty, §97-23-61.
Retaining or recharging, §97-23-59.
Selling or giving away, §97-23-57.
Unlawful to retain or recharge, §97-23-59.
Unlawful to sell or give away, §97-23-57.

RENTAL VEHICLES.
Theft under lease or rental agreement, §97-17-64.

REPORTS.
Charitable bingo.
  Legislative reporting, §97-33-103.
  Manufacturers of supplies and equipment, §97-33-79.

REPORTS —Cont'd
Prostitution.
  Minor taken into custody for prostitution.
    Reporting by law enforcement officer, §97-29-49.
Railroads.
  Animal killed or wounded by train, §97-25-33.
Tobacco sales to underage persons.
  Unannounced inspections, §97-32-5.

RESIDENTIAL MORTGAGE FRAUD, §97-23-107.

RESTAURANTS.
Disorderly conduct, §97-35-5.

RESTITUTION.
Arson, first degree.
  Burning dwelling house or outbuilding, §97-17-1.
  Places of worship, §97-17-3.
  Willfully or negligently firing woods, marsh, etc.
    Restitution of fire suppression costs, §97-17-13.
Bad checks, §§97-19-67, 97-19-73, 97-19-79.
Credit or debit card numbers.
  Fraudulent use, §97-19-85.
Criminal conversion, §97-17-61.
Dumping dead wildlife or wildlife parts on highways and private property, §97-15-32.
Highways.
  Dead wildlife or wildlife parts.
    Dumping on highways, §97-15-32.
  Littering with trash likely to cause fire, §97-15-29.
Identification.
  Fraudulent use of identifying information, §97-19-85.
Larceny.
  Criminal conversion, §97-17-61.
  Rental property, §97-17-62.
  Stealing livestock, §97-17-53.
  Timber, §97-17-59.
Littering.
  Highways and private property with trash likely to cause fire, §97-15-29.
Livestock.
  Malicious or mischievous injury to livestock, §97-41-15.
Malicious mischief, §97-17-67.
Medicaid fraud, §97-19-71.

RESTITUTION —Cont'd
Metal property.
  Stealing, receiving stolen property, §97-17-71.
Motor vehicle grand larceny, §97-17-42.
Railroad offenses.
  Destroying crossing-sign, railroad-gate or warning-signals, §97-25-5.
  Stealing or interfering with communications or signaling equipment, §97-25-35.
Real property.
  Dead wildlife or wildlife parts.
    Dumping on private property, §97-15-32.
  Littering private property with trash likely to cause fire, §97-15-29.
Scrap metal dealers or other purchasers.
  Metal property purchases.
    Person selling stolen property to dealer or purchaser, §97-17-71.
Social security numbers.
  Fraudulent use, §97-19-85.
Solid wastes.
  Unauthorized dumping, §97-15-30.
State or federally funded assistance programs, fraud, §97-19-71.
Supplemental nutritional assistance program (SNAP).
  Fraudulent devices or schemes to acquire benefits, §97-19-71.

RESTROOMS.
Peeping Tom law, §97-29-61.
Photographing or filming another without permission where there is expectation of privacy, §97-29-63.

RETAIL SALES RECEIPTS.
Falsely using or producing, §97-23-105.

RETAIL THEFT.
Shoplifting, §§97-23-93 to 97-23-96.

RICO, §§97-43-1 to 97-43-11.

RIGHT OF WAY.
Levees.
  Excavating dirt or sand on levee right-of-way, §97-15-23.
  Hunting or engaging in target practice upon right-of-way, §97-15-27.

RIPARIAN RIGHTS.
Obstructing waterways.
  Exception to felling tree prohibition, §97-15-41.

RIVERS AND STREAMS.
Obstructing waterways or navigable channels, §§97-15-43, 97-15-45.
Riparian rights.
  Obstructing waterways.
    Exception to fallen tree provision, §97-15-41.

ROBBERY.
Home invasion, §97-17-23.
Possession of burglar's tools, §97-17-35.
RICO, §§97-43-1 to 97-43-11.

ROMAN CANDLES.
Unlawful explosion, §97-37-27.

S

SACRAMENTAL WINE, §§97-31-33, 97-31-37, 97-31-41.
Alcoholic beverage exception to prohibition, §97-31-33.
Religious exception to prohibition, §97-31-33.
Sale by druggists, §§97-31-37, 97-31-41.

SAFECRACKING, §97-17-37.

SALES.
Cigarettes and tobacco products.
  Tobacco sales to underage persons, §§97-32-1 to 97-32-23.

SALES RECEIPTS.
Falsely using or producing, §97-23-105.

SALES TAX.
Automated sales suppression devices to falsify electronic sales records.
  Prohibitions, §97-23-111.
Criminal penalties.
  Falsification of sales records.
    Automated sales suppression devices, zappers and phantom-ware programs, §97-23-111.

SALES TAX —Cont'd
Falsification of sales records.
  Automated sales suppression devices, zappers and phantom-ware programs.
    Prohibitions, §97-23-111.
Penalties.
  Criminal penalties.
    Falsification of sales records.
      Automated sales suppression devices, zappers and phantom-ware programs, §97-23-111.
Phantom-ware programs to falsify electronic sales records.
  Prohibitions, §97-23-111.
Zappers to falsify electronic sales records.
  Prohibitions, §97-23-111.

SCALPING TICKETS, §97-23-97.

SCHOOL BUILDINGS, FACILITIES, PROPERTY.
Arson, §97-17-3.
Firearms and other weapons.
  Possession by student, §97-37-17.

SCHOOLS AND EDUCATION.
Firearms or other weapons on school property.
  Possession by student, §97-37-17.
Home schooling.
  Student possession of weapons, exceptions, §97-37-17.
Polygamy.
  Teaching doctrine, §97-29-43.
Smoking.
  Adult tobacco use on educational property, §§97-32-25 to 97-32-29.
Strip clubs.
  Location within certain distance of school, §97-29-65.
Tobacco products.
  Adult tobacco use on educational property, §§97-32-25 to 97-32-29.
    Citation of act, §97-32-25.
    Definitions, §97-32-27.
    Fines, §97-32-29.
    Prohibited acts, §97-32-29.
    Title of act, §97-32-25.

SCRAP METAL DEALERS AND OTHER PURCHASERS OF METAL PROPERTY, §§97-17-71 to 97-17-71.2.
Administrative penalties.
  Registration violations, §97-17-71.1.

SCRAP METAL DEALERS AND OTHER PURCHASERS OF METAL PROPERTY —Cont'd
Air conditioner evaporator coils or condensers.
  Sale for scrap, §97-17-71.2.
Appeal of final order of secretary of state.
  Registration violations, §97-17-71.1.
Beer keg or syrup tank.
  Unlawful purchase or possession, exception, §97-17-71.
Bronze objects used at cemeteries or other burial places.
  Sale, requirements, §97-17-71.
Cash transaction prohibited, §97-17-71.
Cease and desist orders.
  Registration violations, §97-17-71.1.
Check.
  Payment by, requirement, §97-17-71.
Civil action by person claiming ownership.
  Contest of identification or ownership by purchaser, §97-17-71.
Criminal background history verification.
  Scrap metal dealers, §97-17-71.1.
Criminal penalty.
  Purchases or sales violations, §97-17-71.
Definitions, §97-17-71.
Electronic funds transfers.
  Payment by, requirement, §97-17-71.
False or altered vehicle tag numbers.
  Unlawful, §97-17-71.
False statement or ownership.
  Unlawful, §97-17-71.
Holding property separate and identifiable from other property.
  Duty, time period, §97-17-71.
Hold notice.
  Automatic release of hold.
    Expiration of hold notice, §97-17-71.
  Disposition of property after expiration, §97-17-71.
  Extension.
    Second hold notice delivered to dealer.
      Reasonable cause property stolen, §97-17-71.
  Processing or removing property during.
    Prohibition, §97-17-71.

SCRAP METAL DEALERS AND OTHER PURCHASERS OF METAL PROPERTY —Cont'd

Hold notice —Cont'd
  Reasonable cause to believe property stolen, §97-17-71.
Hours of day purchases prohibited, §97-17-71.
Identification card of seller.
  Copy, record information required, §97-17-71.
Injunctions.
  Registration violations, §97-17-71.1.
Inspection of all purchased property, §97-17-71.
Inspection of property during holding period, §97-17-71.
Metal property defined, §97-17-71.
Minors.
  Purchases from persons under 18 years unlawful, §97-17-71.
Payment methods, §97-17-71.
Photograph, videotape of person selling.
  Required, §97-17-71.
Photograph of property.
  Required, §97-17-71.
Records.
  Duty to keep, information required, §97-17-71.
  Retention, time period, §97-17-71.
    Violation prima facie evidence of knowledge property stolen, §97-17-71.
Registration by scrap metal dealers, §97-17-71.1.
Report to sheriff, records required, §97-17-71.
Restitution to dealer or purchaser.
  Person selling stolen property to dealer or purchaser, §97-17-71.
Rightful owner or entitled to sell property.
  Signed statement from seller, §97-17-71.
Stealing metal property, receiving stolen metal property.
  Restitution, §97-17-71.
Vehicle used to deliver property to purchaser.
  License tag number, make and type.
    Required record information, §97-17-71.

SEA OATS.
Removal from shores, §97-17-84.

SEARCHES AND SEIZURES.
Charitable bingo.
  Enforcement powers, §97-33-109.
Cruelty to animals.
  Authority to seize maltreated, neglected, etc., animals, §97-41-2.
Dog fights.
  Seizure of dogs and paraphernalia, §97-41-19.
Explosives.
  Duty of law enforcement officers, §97-37-23.
Firearms and other weapons.
  Streetgangs.
    Disposition of seized property, §97-44-17.
Gambling money and appliances.
  Resisting seizure, §97-33-19.
Streetgangs.
  Weapons and firearms.
    Disposition of seized property, §97-44-17.

SECONDHAND DEALERS.
Scrap metal dealers and other purchasers.
  Purchase transactions, §§97-17-71 to 97-17-71.2.

SECRETARY OF STATE.
Scrap metal dealers.
  Registration with, §97-17-71.1.

SECRET SOCIETIES.
Unauthorized use of membership buttons, insignia, etc., §97-19-43.

SECURITIES.
Larceny, §97-17-45.
RICO, §§97-43-1 to 97-43-11.

SECURITY GUARDS.
Carrying firearms or other weapon.
  Bank guards, company guards, watchmen, railroad special agents, §97-37-7.

SEDUCTION, §97-29-55.
Female over eighteen years of age, §97-29-55.

SEIZURE.
Charitable bingo.
  Enforcement powers, §97-33-109.
Cruelty to animals.
  Authority to seize maltreated, neglected, etc., animals, §97-41-2.
Dog fights.
  Seizure of dogs and paraphernalia, §97-41-19.

SEIZURE —Cont'd
Firearms and other weapons.
  Streetgangs.
    Disposition of seized property, §97-44-17.
Racketeer influenced and corrupt organizations.
  Seizure of property, §97-43-9.
Streetgangs.
  Weapons and firearms.
    Disposition of seized property, §97-44-17.

SELECTION OF JURORS.
Grand jury.
  Impaneling.
    Number to be impaneled during calendar year, §97-33-11.

SELF-DEFENSE.
Deadly weapons.
  Exhibiting in threatening manner, §97-37-19.
Shooting near street or highway.
  Law enforcement exception, §97-15-13.

SENTENCING.
Adulterated and misbranded food, §97-27-1.
Adultery, §§97-29-1 to 97-29-9.
Advertising.
  Deceptive or misleading advertising, §97-23-3.
  False advertising, §97-23-1.
  Lotteries, §§97-33-33 to 97-33-37.
  Pulling down advertisements, §97-23-5.
Agents.
  Acting as agent for lottery, §97-33-47.
Air piracy, §97-25-55.
Alcoholic beverage offenses.
  Consignment delivery of alcohol or wine.
    False affidavit, §97-31-15.
  Correctional facilities, §97-31-35.
  General penalty provision, §97-31-53.
  Ginger preparations, §97-31-11.
  Moonshining, §§97-31-21, 97-31-23.
  Refusal to testify after witness immunity, §97-31-51.
  Sale of alcohol by druggists, §97-31-45.
  Shot houses, §§97-31-27, 97-31-31.
  Suspension of earned time allowance, §97-31-35.
Animal and livestock diseases.
  Failure to report glanders or farcy cases, §§97-27-7, 97-41-13.

SENTENCING —Cont'd
Animal and livestock diseases —Cont'd
  Noncompliance with burial requirements, §97-27-3.
  Quarantine violations, §97-27-3.
  Selling diseased animals, §97-27-5.
Arson.
  Aggravated assault upon fire fighters, law enforcement officers or emergency medical personnel.
    Injury-causing arson, §97-17-14.
  First degree arson.
    Burning dwelling house or outbuilding, §97-17-1.
    Failure to report accidental fires, §97-17-3.
    Places of worship, §97-17-3.
  Fourth degree arson, §97-17-9.
  Insured property, §97-17-11.
  Second degree arson.
    Burning other buildings or structures, §97-17-5.
  Third degree arson, §97-17-7.
  Willfully or negligently firing woods, marsh, etc., §97-17-13.
Attorney general.
  Counseling or defending criminal defendants, §97-11-3.
Bad checks, §97-19-67.
Bigamy, §97-29-13.
Bonds, surety.
  Approving worthless official bond, §97-11-9.
Boundary landmarks.
  Altering or destroying, §97-17-15.
Brands and marks.
  Saw-log brands.
    Altering or defacing, §97-17-17.
Bribery.
  Athletic contests, §97-29-17.
  Election bribery, §§97-13-1, 97-13-3.
  Highway commission members and employees, §97-15-3.
  Offer of inducements to influence accomplishment of official act, §97-11-53.
  Public or private officials, §§97-11-11, 97-11-13.
Bridges.
  Obstructing, injuring, etc., §97-15-33.
Burglary.
  Boats and other vessels, §97-17-33.
  Breaking and entering building other than dwelling, §97-17-33.

SENTENCING —Cont'd
Burglary —Cont'd
  Breaking inner door of dwelling by one lawfully on premises, §97-17-29.
  Breaking out of dwelling, §97-17-25.
  Home invasion, §97-17-23.
  Inhabited dwelling, §97-17-23.
  Motor vehicles, §97-17-33.
  Nighttime breaking while armed with deadly weapon, §97-17-23.
  Possession of burglar's tools, §97-17-35.
  Railroad cars, §97-17-33.
  Safecracking, §97-17-37.
Child labor.
  Enticing away minor without written consent, §97-23-29.
Circuit court clerks.
  Failure or refusal to send up certificate of appeal, §97-11-15.
  Refusal to give certified copies of papers, §97-11-17.
Code of military justice.
  Commissioned officers.
    Resigning to evade obedience to lawful order, §97-11-39.
Coin-operated machines.
  Fraudulent use or sale of slug, token or other device, §97-21-11.
Communicable diseases.
  Importation to spread by inoculation, §97-27-11.
  Medical certification to travel abroad.
    Failure of smallpox patient to obtain, §97-27-13.
Computer crimes and identity theft.
  Computer equipment, offenses against, §97-45-7.
  Computer fraud, §97-45-3.
  Computer users, offenses against, §97-45-5.
  Intellectual property, offenses against, §97-45-9.
Conspiracy.
  Highway commission members and employees.
    Conspiracy to violate contracts and defraud state, §97-15-5.
  Highway contractors.
    Collusion to raise prices, §97-15-11.
    Conspiracy to violate contracts and defraud state, §97-15-5.
  Impeding railroads, public utilities and carriers, §97-25-43.
  Preventing employment by force or violence, §97-23-41.

SENTENCING —Cont'd
Conspiracy —Cont'd
  Unauthorized dumping of solid wastes, §97-15-30.
  Unlawful restraint of trade, §97-23-85.
Cotton.
  Fraudulent packing, §97-23-7.
  Scalage, §§97-23-11, 97-23-13.
  Seed-cotton not baled same day, §97-23-9.
  Unbranded adulterated cottonseed meal, §97-23-15.
Counterfeiting.
  Credit cards, §§97-19-25, 97-19-29.
  Possession of dies, plates, etc.
    Intent to market imitation goods, §97-21-55.
  Social security cards, §97-19-85.
Credit card forgery, §§97-19-17, 97-19-29.
Credit card fraud.
  Controlling card as security for debt, §§97-19-15, 97-19-29.
  Furnishing things of value on forged or unlawfully obtained card, §§97-19-23, 97-19-29.
  Numbers, fraudulent use, §97-19-85.
  Possession of incomplete cards or devices for counterfeiting, §§97-19-25, 97-19-29.
  Procuring issuance by false statements, §§97-19-11, 97-19-29.
  Signing with intent to defraud, §§97-19-19, 97-19-29.
  Use of card with intent to defraud, §97-19-21.
  Use of expired or revoked card with intent to defraud, §97-19-31.
Credit card theft, §§97-19-13, 97-19-29.
  Using scanner or reencoder to capture information, §§97-19-32, 97-45-31.
Credit or debit card numbers.
  Fraudulent use, §97-19-85.
Cruelty to animals.
  Carrying animal in a cruel manner, §97-41-5.
  Confining animals without food or water, §97-41-7.
  Dogs and cats, §97-41-16.
  Failure to provide sustenance, §97-41-9.
  Fighting animals or cocks, §§97-41-11, 97-41-19.
  General penalty provision, §§97-41-11, 97-41-13.

SENTENCING —Cont'd
Cruelty to animals —Cont'd
  Maliciously or mischievously injuring.
    Livestock, §97-41-15.
  Poisoning animals, §97-41-17.
Dead bodies, §§97-29-19 to 97-29-23.
  Buying or receiving, §97-29-21.
  Disinterment for sale or wantonness, §97-29-19.
  Opening graves for unlawful purposes, §97-29-23.
Deceptive or misleading advertising, §97-23-3.
Desecration of cemetery, §97-29-25.
Diseases, criminal exposure to, §97-27-14.
Disorderly conduct.
  Failure to comply with law enforcement request, §97-35-7.
  Interference with business, customers, invitees, etc., §97-35-5.
  Public buses, §97-35-1.
District attorneys.
  Counseling or defending criminal defendants, §97-11-3.
Disturbances, §§97-35-11 to 97-35-18.
Dog fights, §97-41-19.
Dogs and cats protection law violations, §97-41-16.
Dueling, §§97-39-1, 97-39-3.
  Egging on a fight, §97-39-11.
  Leaving state for purposes of dueling, §§97-39-1 to 97-39-5.
  Vilifying another for not dueling, §97-39-7.
Dumping dead wildlife or wildlife parts on highways or private property, §97-15-32.
Elections.
  Armed troops brought near election place, §97-13-29.
  Ballot boxes, §§97-13-5, 97-13-7.
  Ballots, §§97-13-9, 97-13-13.
    False statement as to inability to mark, or marking to identify voter, §97-13-45.
    Unlawfully showing marked ballot to another, §97-13-45.
  Bribery, §§97-13-1, 97-13-3.
  Corrupt conduct, etc., by election official, §97-13-19.
  Disturbing election, §97-13-21.
  Failure to make return of votes cast, §97-13-23.
  False entry in statewide management system or poll book, §97-13-41.

SENTENCING —Cont'd
Elections —Cont'd
  Limitations on corporate contributions, §§97-13-15, 97-13-17.
  Voter registration, §§97-13-25, 97-13-27.
  Voting, §§97-13-31 to 97-13-36.
Embezzlement, §§97-23-19 to 97-23-27.
  Agents, fiduciaries, etc., §97-23-19.
  Buying or receiving embezzled goods, §97-23-23.
  Converting property to own use, §97-11-25.
  Evidence of debt negotiated by delivery but not delivered, §97-23-21.
  Failure to deliver money, etc., to successor, §97-11-27.
  False account entries, §97-11-29.
  Fraud committed in public office, §97-11-31.
  Property borrowed or hired, §97-23-27.
  Property held in trust or received on contract, §97-23-25.
  Railroad tickets, §97-25-9.
Endangerment by bodily substance, §97-27-14.
Enhanced penalties.
  Commission of felony while using firearm, §97-37-37.
Explosives.
  False report of placing, §97-37-21.
  Unlawful possession of explosives, §97-37-23.
  Unlawful use, §97-37-25.
Extortion.
  Collecting unauthorized fees, §97-11-33.
False advertising, §97-23-1.
False fire alarm, §97-35-45.
False personation, §§97-19-33, 97-19-35.
  Masquerading as deaf person, §97-19-37.
False pretenses.
  Insolvent bank receiving deposits, §97-19-47.
  Obtaining signature or thing of value with intent to defraud, §§97-19-39, 97-19-41.
  Patriotic and fraternal organizations.
    Unauthorized use of membership buttons, insignia, etc., §97-19-43.
  Producing child with intent to intercept inheritance, §97-19-45.

SENTENCING —Cont'd

False pretenses —Cont'd
- Registering false pedigree, §97-19-49.
- Substituting child to deceive parent or guardian, §97-19-53.

False reporting of crime, §97-35-47.

Felons.
- Failure to register, §97-35-27.

Ferries.
- Obstructing, injuring, etc., §97-15-33.

Ferry keepers.
- Charging excessive toll, §97-15-15.
- Failure to give bond, §97-15-17.
- Suffering ferry to be out of order, §97-15-17.
- Unreasonable detention of person, §97-15-19.

Firearms and other weapons.
- Aiding or encouraging minor to possess, §97-37-17.
- Carrying while concealed, §97-37-1.
- Commission of felony while using firearm.
  - Enhanced penalties, §97-37-37.
- Exhibiting in threatening manner, §97-37-19.
- Parent or guardian permitting minor to possess, §97-37-15.
- Possession by minor or intoxicated person, §97-37-13.
- Shooting into dwelling house, §97-37-29.
- Shooting near dwelling house.
  - Causing damage to property, domesticated animal or livestock, §97-37-30.
- Silencers on firearms, §97-37-31.
- Stolen firearms, §97-37-35.
- Unlawful possession by convicted felon, §97-37-5.

Fireworks.
- Unlawful explosion, §97-37-27.

Food sales.
- Unwholesome bread or drink, §97-27-15.
- Unwholesome flour and other provisions, §97-27-17.

Forgery, §97-21-33.
- Credit card forgery, §§97-19-17, 97-19-29.

Fornication, §§97-29-1 to 97-29-9.

Fraud and deceit.
- Computer fraud, §97-45-3.
- State or federally funded assistance programs, §97-19-71.

SENTENCING —Cont'd

Gambling.
- Betting, gaming or wagering generally, §97-33-1.
- Betting on horse or yacht race or shooting match, §97-33-27.
- Betting with minor, §§97-33-21, 97-33-23.
- Building owners, less, etc.
  - Permitting on premises, §97-33-13.
- Club associations, §97-33-11.
- Gambling devices prohibition, §97-33-7.
- Hotel, tavern and boarding-house keepers.
  - Refusal to report gambling guests, §97-33-15.
- Judicial and law enforcement officers, §97-33-3.
- Keeping games or gaming tables, §97-33-9.
- Pool-selling, §97-33-25.
- Resisting seizure of forfeited money and appliances, §97-33-19.

Highway contractors.
- Collusion to raise prices, §97-15-11.

Highways.
- Dead wildlife or wildlife parts.
  - Dumping on highways, §97-15-32.
- Littering highways with trash likely to cause fire, §97-15-29.
- Littering with tacks, glass or other damaging objects, §97-15-31.
- Obstructing or injuring.
  - Plank-road or covered road, §97-15-35.
- Road overseers.
  - Refusing or neglecting duty, §97-15-47.
  - Suffering road to remain out of repair, §97-15-49.

Hunting or shooting near street or highway, §97-15-13.

Identification.
- Fraudulent use of identifying information, §97-19-85.

Incest.
- Cohabitation or copulation by divorced persons, §97-29-29.

Insurance agents.
- Acting for company not complying with law, §97-23-31.

Interference with lawful exercise of trade, §97-23-33.

Intimidation.
- Electors, §§97-13-37, 97-13-39.

SENTENCING —Cont'd
Labor and employment relations.
  Enticing away employee without written consent, §97-23-29.
Labor disputes.
  Preventing employment by force or violence, §§97-23-39, 97-23-41.
Landlord and tenant.
  Enticing away lessee without written consent, §97-23-29.
Larceny.
  Animal killed or wounded by train, §97-25-31.
  Coin-operated devices, §97-17-68.
  Criminal conversion, §97-17-61.
  Dogs, §97-17-51.
  Livestock, §97-17-53.
  Motor vehicle grand larceny, §97-17-42.
  Negotiable instruments, §97-17-45.
  Petit larceny, §97-17-43.
  Rental property, §97-17-62.
  Retail employee giving away merchandise without consent of merchant, §97-23-99.
  Shearing wool from dead sheep, §97-17-49.
  Telegraph and telephone fixtures, §97-25-53.
  Tenants in common, §97-17-63.
  Theft under lease or rental agreement, §97-17-64.
  Timber, §97-17-59.
Levees.
  Breaking enclosures, §97-15-21.
  Depositing trash or storing commodities, §97-15-21.
  Excavating dirt or sand on levee right-of-way, §97-15-23.
  Hunting or engaging in target practice, §97-15-27.
  Maliciously cutting, destroying, etc., §97-15-25.
Liens.
  Removing agricultural products from premises subject to lien, §97-17-73.
  Removing personal property subject to lien, §§97-17-75, 97-17-77.
Lighthouses.
  Destroying, etc., property, §97-35-21.
Littering.
  Beaches.
    Breakable containers or injurious debris, §97-27-9.

SENTENCING —Cont'd
Littering —Cont'd
  Highways and private property with trash likely to cause fire, §97-15-29.
  Highways with tacks, glass or other damaging objects, §97-15-31.
  Unauthorized dumping of solid wastes, §97-15-30.
Livestock.
  Registering animal falsely, §97-19-49.
  Stealing milk from cows, §97-17-55.
Looting, §97-17-65.
Lotteries.
  Acting as agent for lottery, §97-33-47.
  Advertising, §§97-33-33 to 97-33-37.
  Putting on lottery, §97-33-31.
  Raffles, §97-33-49.
  Railroad sale of lottery tickets, §97-33-43.
  Sale of tickets, §§97-33-39, 97-33-41.
  Steamboat sale of lottery tickets, §97-33-45.
Mail fraud, §97-19-83.
Meat and meat products.
  Sale of dead, diseased and unclean animals, §97-27-19.
  Selling meat of animal not slaughtered, §97-27-15.
Medicaid fraud.
  Fraudulent devices or schemes to acquire medicaid, §97-19-71.
Money laundering, §97-23-101.
Moonshining, §§97-31-21, 97-31-23.
Mortgages.
  Residential mortgage fraud, §97-23-107.
Motion pictures.
  Operating unauthorized audiovisual recording device, §97-23-92.
Motor carriers.
  Conspiracy to impede, §97-25-43.
  Obstructing or impeding by intimidation, force or violence, §97-25-45.
  Wilfully shooting or throwing at, §97-25-47.
Motor vehicles.
  Hydraulic brake fluid.
    Sale of inferior quality, §97-35-19.
  Wilfully shooting or throwing at, §97-25-47.
Navigation lights.
  Extinguishing, etc., §97-35-21.
Nuclear sabotage, §97-25-57.

SENTENCING —Cont'd
Obscenity, §97-29-109.
Oleomargarine and other imitation food.
  Labeling violation, §97-23-37.
Parents of illegitimate children.
  Multiple births, §97-29-11.
Photographing or filming another without permission where there is expectation of privacy, §97-29-63.
Picketing.
  Mass picketing by union obstructing or interfering with right of access to business or residence, §97-23-109.
Piracy of recordings, §§97-23-87, 97-23-89.
  Motion pictures.
    Operating unauthorized audiovisual recording device, §97-23-92.
Plants.
  Removal of sea oats or uniola paniculata from shores, §97-17-84.
Poisons.
  Arsenic, §§97-27-25 to 97-27-29.
  Labeling and registration, §§97-27-23, 97-27-29.
Polygamy.
  Teaching doctrine, §97-29-43.
Professions and occupations.
  Unlicensed practice, §97-23-43.
Prostitution, §§97-29-49, 97-29-51.
Public contracts.
  Offer of inducements to influence award of contract, §97-11-53.
Public drunkenness, §97-29-47.
Public officers and employees.
  Elected officials exercising duties without oath of office or giving bond, §97-11-41.
  Failure to perform any duty, §97-11-37.
  Failure to return known offenders, §97-11-35.
  Purposeful avoidance of knowledge of offense, §97-11-35.
  Railroad fares.
    Reduced fare and free pass violations, §97-11-43.
Public profanity, §97-29-47.
Public records.
  Alteration of records, §97-11-1.
Public safety officials.
  Failure to return known offenders, §97-11-35.

SENTENCING —Cont'd
Public safety officials —Cont'd
  Purposeful avoidance of knowledge of offense, §97-11-35.
Public utilities.
  Conspiracy to impede, §97-25-43.
  Obstructing or impeding by intimidation, force or violence, §97-25-45.
Racketeer influenced and corrupt organizations, §97-43-7.
Raffles, §97-33-49.
Railroad offenses.
  Conspiracy to impede trains, §97-25-43.
  Derailing cars, §97-25-23.
  Destroying crossing-sign, railroad-gate or warning-signals, §97-25-5.
  Disposition of animal killed by train before reporting incident, §97-25-33.
  Driving vehicle or livestock on track, §97-25-7.
  Embezzlement of tickets, §97-25-9.
  Failure of locomotive to stop before crossing track of another company, §97-25-19.
  Intoxication of engineer or conductor, §97-25-13.
  Jumping on or off cars in motion, §97-25-15.
  Leaving switch open or improperly placed, §97-25-17.
  Lottery ticket sales, §97-33-43.
  Obstructing or impeding by intimidation, force or violence, §97-25-45.
  Obstructing or injuring trains, §§97-25-21, 97-25-23.
  Seizing and running locomotive, §97-25-25.
  Signaling or unlawfully interfering with train, §97-25-27.
  Stealing animal killed or wounded by train, §97-25-31.
  Stealing a ride, §97-25-29.
  Stealing or interfering with communications or signaling equipment, §97-25-35.
  Stopping or standing at crossing, §97-25-37.
  Uncoupling locomotives and cars, §97-25-39.
  Wilfully shooting from or on moving train, §97-25-41.

SENTENCING —Cont'd
Railroad offenses —Cont'd
  Wilfully shooting or throwing at trains, §97-25-47.
Real property.
  Dead wildlife or wildlife parts.
    Dumping on private property, §97-15-32.
  Littering private property with trash likely to cause fire, §97-15-29.
Receiving stolen property, §97-17-70.
Rental storage batteries, §§97-23-55 to 97-23-61.
Residential mortgage fraud, §97-23-107.
Restraint of trade.
  Threats or coercion to prevent lawful conduct of business, §97-23-83.
  Unlawful boycott, §97-23-85.
Retail sales receipts.
  Falsely using or producing, §97-23-105.
Road overseers.
  Refusing or neglecting duty, §97-15-47.
  Suffering road to remain out of repair, §97-15-49.
Safecracking, §97-17-37.
Seduction, §97-29-55.
Shooting into dwelling house, §97-37-29.
Shooting near dwelling house.
  Causing damage to property, domesticated animal or livestock, §97-37-30.
Shoplifting, §§97-23-93, 97-23-94.
  Aggregation of offenses over certain period of time, §97-23-93.
  Theft detection devices.
    Removal and shielding devices, §97-23-93.1.
Silencers on firearms, §97-37-31.
Social security numbers.
  Fraudulent use, §97-19-85.
Sodomy, §97-29-59.
Stolen firearms, §97-37-35.
Storage batteries, §§97-23-55 to 97-23-61.
Streetgangs.
  Penalties for criminal activity, §97-44-19.
Supplemental nutritional assistance program (SNAP).
  Fraudulent devices or schemes to acquire benefits, §97-19-71.
Tax collectors.
  Collecting privilege tax without issuing license, §97-11-49.

SENTENCING —Cont'd
Tax collectors —Cont'd
  Failure to complete duplicate tax receipts, §97-11-45.
  Failure to make settlement, §97-11-47.
Telephone and telegraph companies.
  Failure to dispatch governmental messages, §97-25-51.
  Injuring or destroying lines, §97-25-53.
  Interrupting communications, §97-25-53.
  Stealing or destroying fixtures, §97-25-53.
  Wrongful access to telecommunications messages, §97-25-49.
Telephone profanity, §97-29-45.
Theft of telecommunication services, §97-25-54.
Tobacco sales to underage persons, §97-32-5.
  Juvenile misrepresentation of age, §97-32-13.
  Point of sale warning signs, §97-32-11.
  Retail sales clerks, §97-32-7.
  Sale of unsealed tobacco products, §97-32-17.
  Tobacco permit violations, §97-32-19.
  Vending machine tobacco sales, §97-32-15.
Toll-bridge keepers.
  Charging excessive toll, §97-15-15.
  Failure to give bond, §97-15-17.
  Suffering bridge to be out of order, §97-15-17.
  Unreasonable detention of person, §97-15-19.
Toy pistols.
  Unlawful sales, §97-37-33.
Trees and timber.
  Boxing pine trees, §97-17-79.
  Cutting or rafting upon lands of another, §97-17-81.
  Injuring or destroying shade or ornamental trees, §97-17-83.
  Saw-log brands.
    Altering or defacing, §97-17-17.
Trespass.
  Airports.
    Air operations or sterile areas, §97-17-87.
  Altering or destroying notices posted on land, §97-17-91.
  Customer or patron.
    Refusal to leave premises upon request, §97-23-17.

SENTENCING —Cont'd
Trespass —Cont'd
  Destruction or carrying away of vegetation, etc., §97-17-89.
  Entering lands of another without permission, §97-17-93.
  Entry on premises where dangerous devices are manufactured, etc., §97-17-95.
  Going upon enclosed land of another, §97-17-85.
  Going upon premises of another after being forbidden to do so, §97-17-97.
  Inciting or soliciting persons to trespass, §97-17-99.
  Remaining on premises when asked to leave, §97-17-97.
  Wilful or malicious trespass, §97-17-87.
Trusts and trustees.
  Trustees of state institutions.
    Incurring liability in excess of income, §97-11-51.
Universal product codes.
  Falsely using or producing, §97-23-105.
Unnatural intercourse, §97-29-59.
Vandalism.
  Cemetery property, §97-17-39.
  Churches, §97-17-39.
  Highway signs and signals, §§97-15-1, 97-15-13.
  Levees, §97-15-23.
  Lighthouse property, §97-35-21.
  Public buildings, §97-17-39.
  School buildings, §97-17-39.
Voter registration.
  Falsely procuring registration, §97-13-25.
  Neglect or misconduct by registrar, §97-13-25.
Voting.
  Intimidating, boycotting, etc., §§97-13-37, 97-13-39.
Voyeurism, §97-29-61.
Waters and watercourses.
  Obstructing waterways.
    Felling tree or bush into stream, §§97-15-39, 97-15-41.
    Navigable waters, §§97-15-43, 97-15-45.
Wire fraud, §97-19-83.

SERVICE ANIMALS.
Harassment of service dogs, §97-41-21.

SERVICE OF NOTICE, PROCESS AND OTHER PAPERS.
Arson.
  Criminal forfeitures.
    First degree arson, §97-17-4.
Criminal forfeitures.
  First degree arson, §97-17-4.
Forfeitures.
  Trademarks and recordings violations.
    Petition for forfeiture, §97-21-103.
Forgery.
  Record of return on service, §97-21-45.
Racketeer influenced and corrupt organizations.
  Seizure and forfeiture of property, §97-43-11.
Street gangs.
  Civil proceedings, §97-44-11.
Trademarks and recordings violations.
  Civil forfeiture.
    Petition for forfeiture, §97-21-103.

SEX OFFENSES.
Incest, §§97-29-27, 97-29-29.
  Divorce grounds, §97-29-29.
  Marriages void, §97-29-27.
Sodomy.
  Unnatural intercourse, §97-29-59.

SHEEP.
Larceny.
  Shearing wool from dead sheep, §97-17-49.

SHERIFFS.
Extortion.
  Collecting unauthorized fees, §97-11-33.
Failure to perform any duty, §97-11-37.
Failure to return known offenders, §97-11-35.
Purposeful avoidance of knowledge of offense, §97-11-35.

SHOOTING INTO DWELLING, §97-37-29.

SHOOTING NEAR DWELLING.
Causing damage to property, domesticated animal or livestock, §97-37-30.

SHOPLIFTING, §§97-23-93 to 97-23-96.
Aggregation of offenses over certain period of time, §97-23-93.

SHOPLIFTING —Cont'd
Aiding and abetting shoplifting.
  Employee giving away merchandise without consent of merchant, §97-23-99.
  Juvenile offender, §§97-23-94, 97-23-94.1.
Civil remedies for shoplifting violations, §97-23-96.
Detention of suspect without incurring civil liability, §97-23-95.
  Activation of anti-shoplifting device is probable cause, §97-23-93.1.
Elements of offense, §97-23-93.
Evidence of price or ownership of merchandise, §97-23-93.
Felony shoplifting, §97-23-93.
Juvenile offenders.
  Aiding and abetting shoplifting, §97-23-94.
  Civil recovery from parents or guardians, §97-23-96.
Organized theft or fraud enterprise, §97-43-3.1.
Presumptions, §97-23-93.
Theft detection devices.
  Removal and shielding devices, §97-23-93.1.
Written demand requirement.
  Commencement of civil proceedings, §97-23-96.

SIDEWALKS.
Littering with tacks, glass or other damaging objects, §97-15-31.

SIGNATURES.
False pretenses.
  Obtaining with intent to defraud, §§97-19-39, 97-19-41.
Forgery.
  Unauthorized use or signing of another's name, §97-21-51.

SIGNS.
Tobacco sales to underage persons.
  Point of sale warning signs, §97-32-11.

SILENCERS.
Unlawful sale, possession, etc., §97-37-31.

SINKS.
Stainless steel sinks.
  Scrap metal dealers.
    Metal property purchase transactions generally, §§97-17-71 to 97-17-71.2.

SKY-ROCKETS.
Unlawful explosion, §97-37-27.

SMALLPOX.
Importation to spread by inoculation, §97-27-11.
Medical certification to travel abroad, §97-27-13.

SMOKELESS TOBACCO.
Tobacco sales to underage persons.
  General provisions, §§97-32-1 to 97-32-23.

SMOKING.
Adult tobacco use on educational property, §§97-32-25 to 97-32-29.
  Citation of act, §97-32-25.
  Definitions, §97-32-27.
  Fines, §97-32-29.
  Prohibited acts, §97-32-29.
  Title of act, §97-32-25.
Public transportation, §97-35-1.
Tobacco sales to underage persons.
  General provisions, §§97-32-1 to 97-32-23.

SNIFFING GLUE, §97-27-33.

SNUFF.
Tobacco sales to underage persons.
  General provisions, §§97-32-1 to 97-32-23.

SOCIAL MEDIA.
Online impersonation, §97-45-33.

SOCIAL SECURITY CARDS.
Counterfeiting, §97-19-85.
Use with intent to defraud, §97-19-85.

SOCIAL SECURITY NUMBER.
Fraudulent use, §97-19-85.
Organized theft or fraud enterprise, §97-43-3.1.

SODOMY.
Unnatural intercourse, §97-29-59.

SOLICITATION.
Alcoholic beverage offenses.
  Unlawful orders for liquor, etc., §97-31-49.
Prostitution, §97-29-51.

SONS OF THE AMERICAN REVOLUTION.
Unauthorized use of membership buttons, insignia, etc., §97-19-43.

SONS OF THE CONFEDERATE VETERANS.
Unauthorized use of membership buttons, insignia, etc., §97-19-43.

SONS OF VETERANS.
Unauthorized use of membership buttons, insignia, etc., §97-19-43.

SPAS.
Peeping Tom law, §97-29-61.

SPORTS.
Bribery.
  Professional or amateur games, §97-29-17.
  Wrestling matches excepted, §97-29-17.
Fantasy contests, §§97-33-301 to 97-33-317.
Ticket scalping, §97-23-97.

SPYING.
Photographing or filming another without permission, §97-29-63.
Voyeurism, §97-29-61.

STAINLESS STEEL SINKS.
Scrap metal dealers.
  Metal property purchase transactions generally, §§97-17-71 to 97-17-71.2.

STALKING.
Cyberstalking, §97-45-15.

STALLIONS.
Keeping in public view or permitting to run at large, §97-29-57.

STATE DEPARTMENTS AND AGENCIES.
Forgery.
  Account books, §97-21-1.

STATUTE OF LIMITATIONS.
Racketeer influenced and corrupt organizations.
  Civil proceedings, §97-43-9.
Trademarks and recording violations.
  Civil forfeiture proceedings, §97-21-101.

STAYS.
Criminal trespass.
  Recovery of damages in civil case, §97-17-103.

STEAMBOATS.
Lotteries.
  Sale of lottery tickets, §97-33-45.

STINK BOMBS.
Unlawful possession of explosives, §97-37-23.

STOCK AND STOCKHOLDERS.
Forgery.
  Certificate or public security, §§97-21-9, 97-21-49.

STOLEN PROPERTY.
Larceny generally, §§97-17-41 to 97-17-65.

STRAYS.
Stallion or jack running at large, §97-29-57.

STREAMS.
Obstructing, injuring, etc., §§97-15-39, 97-15-41.
Obstructing waterways or navigable channels.
  Exception to fallen tree provision, §97-15-41.

STREET GANGS, §§97-44-1 to 97-44-19.

STRIKES.
Preventing employment by force or violence, §§97-23-39, 97-23-41.

STRIP CLUBS.
Location within certain distance of church, school, kindergarten, or courthouse, §97-29-65.

SUBPOENAS.
Attorney general.
  Unauthorized dumping of solid wastes, §97-15-30.
Identity theft investigations.
  Authority of attorney general, form, §97-45-29.

SUBSTANCE ABUSE.
Glue sniffing, §97-27-33.
Public intoxication, §97-29-47.

SUMMONS.
Forgery.
  Court papers and process, §97-21-35.

SUPPLEMENTAL NUTRITIONAL ASSISTANCE PROGRAM (SNAP).
Fraud.
  Dual prosecutions, §97-19-71.
  Exchange of food purchased with, §97-19-71.
  Fraudulent devices and schemes to acquire benefits, §97-19-71.
  Restitution, §97-19-71.

SUPPORT ANIMALS.
Harassment of support dogs, §97-41-21.

SWAMP ROOT, §§97-31-19 to 97-31-23.

SWEEPSTAKES.
Gambling.
  Internet sweepstakes cafes.
    Prohibited, §97-33-8.

SWINE.
Fight between canine and hog.
  Intentionally conducting, §97-41-18.

SYNAGOGUES.
Arson, §97-17-3.
Disturbance of worship service, §97-35-17.
Grand larceny, §97-17-41.
Petit larceny, §97-17-43.
Vandalism, §97-17-39.

T

TAILGATING.
Railroad cars, §97-25-15.

TAMPERING.
Coin-operated devices, §97-17-68.
Electric power lines, §97-25-1.
Utility meters, §97-25-3.

TANNING FACILITIES.
Peeping Tom law, §97-29-61.

TAPE PIRACY, §§97-23-87 to 97-23-92.

TAX ASSESSORS.
Extortion.
  Collecting unauthorized fees, §97-11-33.

TAX COLLECTORS.
Duplicate tax receipts.
  Failure to complete, §97-11-45.
Final settlement.
  Failure to make settlement, §97-11-47.
Privilege taxes.
  Collecting without issuing license, §97-11-49.

TEACHERS.
Adultery with pupil, §97-29-3.
Fornication with pupil, §97-29-3.
Polygamy.
  Teaching doctrine, §97-29-43.
Sexual involvement with student, §97-29-3.

TELECOMMUNICATIONS.
Critical infrastructure trespass or impeding critical infrastructure, §97-25-59.
Wire fraud, §97-19-83.

TELEPHONE AND TELEGRAPH COMPANIES.
Failure to dispatch governmental messages, §97-25-51.
Injuring or destroying lines, §97-25-53.
Interrupting communications, §97-25-53.
Stealing or destroying fixtures, §97-25-53.
Theft of telecommunication services, §97-25-54.
Vandalism of lines or fixtures, §97-25-53.
Wrongful access to telecommunications messages, §97-25-49.

TELEPHONE CALLS.
Profanity, §97-29-45.

TELEPHONE FRAUD, §97-19-83.

TELEPHONE HARASSMENT, §97-29-45.

TELEPHONE PROFANITY, §97-29-45.

TEMPLES.
Arson, §97-17-3.
Disturbance of worship service, §97-35-17.
Grand larceny, §97-17-41.
Petit larceny, §97-17-43.
Vandalism, §97-17-39.

TENANTS IN COMMON.
Theft of property, §97-17-63.

TERRORISM.
Home invasion, §97-17-23.
Introduction of harmful substances, §§97-27-10 to 97-27-12.

THEATERS.
Disorderly conduct, §97-35-5.

THEFT.
Cable television services, §97-25-54.
Credit card theft, §§97-19-13, 97-19-29.
Identity theft, §97-45-19.
  Crimes chargeable, §97-45-29.
  Investigations by attorney general.
    Authority in conducting, §97-45-29.
Larceny.
  General provisions, §§97-17-41 to 97-17-65.
Looting, §97-17-65.
Metal property, §97-17-71.

THEFT —Cont'd
Motor vehicles.
  Grand larceny, §§97-17-41, 97-17-42.
Receiving stolen property, §97-17-70.
Rental property, §97-17-62.
Telephone and other telecommunication services, §97-25-54.

THREATS.
Air piracy, §97-25-55.
Deadly weapons.
  Exhibiting in threatening manner, §97-37-19.
Elections.
  Intimidating elector to prevent voting, §97-13-39.
  Intimidating elector to procure vote, §97-13-37.
Motor carriers and public utilities.
  Obstructing or impeding by intimidation, force or violence, §97-25-45.

TICKETS.
Lottery tickets, §§97-33-39, 97-33-41.
Scalping, §97-23-97.

TICKET SCALPING, §97-23-97.

TIME.
Trademarks and recordings violations.
  Civil forfeiture proceedings.
    Commencing, §97-21-101.
    Hearings, §97-21-103.

TOBACCO AND TOBACCO PRODUCTS.
Adult tobacco use on educational property, §§97-32-25 to 97-32-29.
Underage persons, tobacco sales to, §§97-32-1 to 97-32-23.

TOKENS.
Counterfeiting, §97-21-11.

TOLL ROADS AND TOLL BRIDGES.
Bridges.
  Charging excessive toll, §97-15-15.
  Suffering bridge to be out of order.
    Consequences of failure to pay fine, §§97-15-17, 97-15-51.
  Unreasonable detention of person, §97-15-19.

TORTS.
Juvenile vandalism.
  Highway signs and signals.
    Civil liability of parents, §97-15-1.

TOY PISTOLS.
Sale prohibition, §97-37-33.

TRADEMARKS.
Forfeiture.
  Counterfeiting or forging.
    Civil forfeiture.
      Aggrieved persons may institute proceedings, §97-21-101.
      Answer by owner of seized property.
        Filing, time, §97-21-103.
      Attorney general, district attorneys, state agencies may institute proceedings, §97-21-101.
      Burden of proof that property subject to forfeiture, §97-21-103.
      Disposition of forfeited property, §97-21-103.
      Hearing on petition for forfeiture, §97-21-103.
      Intervention by attorney general, §97-21-101.
      Other remedies not precluded, §97-21-101.
      Petition for forfeiture when property seized.
        Filing, venue, service, §97-21-103.
      Proceeds, disposition, §97-21-103.
      Prompt institution of proceedings.
        Property seized, §97-21-103.
      Record owner of property or holder of security interest.
        Service of petition on, §97-21-103.
      Seizure of property upon process, §97-21-101.
      Seizure of property without process, §97-21-101.
      Service of petition for forfeiture, §97-21-103.
      Statute of limitations, §97-21-101.
      Time period for commencing, §97-21-101.
      Who may institute proceedings, §97-21-101.
    Property subject to, §97-21-53.
      Dies, plates, printed labels, §97-21-55.
Forgery and counterfeiting, §§97-21-53 to 97-21-57.

TRAFFIC CONTROL DEVICES.
Vandalism.
  Juvenile offenders.
    Liability of parents of minor, §97-15-1.

TRAINS.
Railroad offenses.
  General provisions, §§97-25-5 to 97-25-47.

TRANSPORTATION COMMISSION.
Bribery.
  Commission members and employees, §97-15-3.
Conspiracy to violate contracts and defraud state, §97-15-5.

TREES AND TIMBER.
Acquisition of timber for resale.
  Payment, §97-17-60.
Boxing pine trees, §97-17-79.
Brands of saw-logs.
  Altering or defacing, §97-17-17.
Cutting or rafting upon lands of another, §97-17-81.
Larceny of timber, §97-17-59.
Obstructing waterways.
  Exception to felling tree prohibition, §97-15-41.
Payment for timber acquired for resale, §97-17-60.
Saw-log brands.
  Altering or defacing, §97-17-17.
Shade or ornamental trees.
  Injuring or cutting, §97-17-83.
Stealing timber, §97-17-59.

TRESPASS, §§97-17-85 to 97-17-103.
Airports.
  Air operations or sterile areas.
    Enhanced penalties for willful trespass, §97-17-87.
Criminal trespass generally, §§97-17-85 to 97-17-103.
Critical infrastructure trespass, §97-25-59.
Customers or patrons refusing to leave premises after being requested to do so, §97-23-17.
Dangerous devices, manufacture.
  Entry on premises, §97-17-95.
Destroying or carrying away of vegetation, etc., §97-17-89.
Entering lands of another without permission, §97-17-93.
  Enclosed lands, §97-17-85.

TRESPASS —Cont'd
Entry on premises where dangerous devices are manufactured, etc., §97-17-95.
Fences, gates, etc.
  Going upon enclosed land of another, §97-17-85.
Going upon premises after being forbidden to do so, §97-17-97.
Inciting or soliciting persons to trespass, §97-17-99.
Peeping Tom trespass, §97-29-61.
Posted notices on land.
  Defacing, altering or destroying, §97-17-91.
Prohibition on recovery for injuries, §97-17-103.
Remaining upon premises after being asked to leave, §97-17-97.
  Customers or patrons, §97-23-17.
  Wilful or malicious trespass, §97-17-87.
Vegetation.
  Destroying or carrying away, §97-17-89.
Willful or malicious, §97-17-87.

TRIAL.
Racketeer influenced and corrupt organizations.
  Jury trial in civil proceedings, §97-43-9.

TRUSTS AND TRUSTEES.
Bribery of trustee, §§97-11-11, 97-11-13.
Embezzlement by trustees, §97-23-19.

U

UNDERAGE SMOKING.
Tobacco sales to underage persons.
  General provisions, §§97-32-1 to 97-32-23.

UNFAIR TRADE PRACTICES.
False advertising, §§97-23-1 to 97-23-5.

UNIOLA PANICULATA.
Removal from shores, §97-17-84.

UNIVERSAL PRODUCT CODES.
Falsely using or producing, §97-23-105.

UNNATURAL INTERCOURSE, §97-29-59.

UPC LABELS.
Falsely using or producing, §97-23-105.

UPSKIRT PHOTOS.
Photographing or filming without permission, §97-29-63.

UTILITY METERS.
Tampering with meter, §97-25-3.

V

VANDALISM.
Cemetery property, §§97-17-39, 97-29-25.
Highway signs and signals, §§97-15-1, 97-15-13.
  Shooting at traffic control devices, §97-15-13.
Levees.
  Disfiguring, etc., §97-15-23.
Lighthouse property, §97-35-21.
Places of worship, §97-17-39.
Public buildings, §97-17-39.
School buildings, §97-17-39.
Telegraph and telephone lines or fixtures, §97-25-53.

VENDING MACHINES.
Exception to gambling devices prohibition, §97-33-7.
Forgery of slug, token or other device, §97-21-11.
Larceny therefrom, §97-17-68.
Tobacco sales to underage persons.
  Restricted access, §97-32-15.

VENUE.
Computer crimes, §97-45-11.
Criminal cases.
  Paternity proceedings.
    Natural parents of illegitimate children.
      Multiple births, §97-29-11.
  Residential mortgage fraud, §97-23-107.
Forfeiture.
  Trademarks and recordings violations.
    Civil forfeiture.
      Petition for forfeiture, §97-21-103.
Mail fraud, §97-19-83.
Paternity proceedings.
  Natural parent of illegitimate children.
    Multiple births, §97-29-11.

VENUE —Cont'd
Racketeer influenced and corrupt organizations.
  Civil proceedings, §97-43-9.
Scrap metal dealers or other purchasers.
  Appeal of final order of secretary of state.
    Registration violations, §97-17-71.1.
  Metal property.
    Contesting identification or ownership.
      Action by person claiming ownership, §97-17-71.
Street gangs.
  Civil proceedings, §97-44-9.
Telephone harassment, §97-29-45.
Telephone profanity, §97-29-45.
Trademarks and recordings violations.
  Civil forfeiture.
    Petition for forfeiture, §97-21-103.
Wire fraud, §97-19-83.

VETERANS.
Firearms and other weapons.
  Persons permitted to carry, §97-37-7.

VETERANS OF FOREIGN WARS.
Unauthorized use of membership buttons, insignia, etc., §97-19-43.

VIDEO PIRACY, §§97-23-87 to 97-23-92.

VOTER FRAUD, §97-13-35.

VOTER REGISTRATION.
False registration, §97-13-25.
Registrars.
  Neglect or misconduct, §97-13-27.

VOYEURISM, §97-29-61.

W

WAGERING.
Fines, §97-33-1.
Gambling.
  General provisions, §§97-33-1 to 97-33-49.

WARRANTS.
Forgery.
  State treasury warrants, §§97-21-33, 97-21-61.
United States treasury.
  Forgery, §§97-21-33, 97-21-61.

WASTEWATER DISPOSAL SYSTEMS.
Critical infrastructure trespass or impeding critical infrastructure, §97-25-59.

WATCHMEN.
Persons permitted to carry deadly weapons, §97-37-7.

WATERCOURSES.
Ballast.
  Discharging in harbor, §97-15-43.
Canals.
  Obstructing, injuring, etc., §§97-15-39, 97-15-41.
Felling tree or bush into stream or canal, §97-15-39.
  Trees in excess of six inches in diameter, §97-15-41.
Navigable channel, §97-15-43.
Navigable waters.
  Obstructing waterways, §§97-15-43, 97-15-45.
Obstructing waterways, §§97-15-39 to 97-15-45.
  Ballast.
    Discharge into harbor, §97-15-43.
  Criminal penalty, §§97-15-39, 97-15-41.
    Navigable channel, §97-15-43.
    Permanently obstructing, §97-15-45.
  Felling brush or tree into canal or steam, §97-15-39.
    Trees or logs in excess of 6 inches, §97-15-41.
  Navigable channels, §97-15-43.
  Permanently, §97-15-45.

WATER METERS.
Tampering with meter, §97-25-3.

WEAPONS OF MASS DESTRUCTION.
False reports of placing, §97-37-21.
Unlawful use, §97-37-25.

WILD ANIMALS.
Dead wildlife or wildlife parts.
  Dumping on highways and private property, §97-15-32.

WILDLIFE.
Dead wildlife or wildlife parts.
  Dumping on highways and private property, §97-15-32.

WILDLIFE, FISHERIES AND PARKS DEPARTMENT.
Firearms and other weapons.
  Enforcement officers carrying, §97-37-7.

WILLS.
Forgery.
  Record of will, §97-21-45.

WINE.
Sacramental wine.
  Religious exception to prohibition, §97-31-33.
  Sale by druggists, §§97-31-37, 97-31-41.

WIRE FRAUD, §97-19-83.

WIRELESS COMMUNICATIONS.
Wrongful access to telecommunications messages by cellular phone, §97-25-49.

WITNESSES.
Alcoholic beverage offenses.
  Witness immunity from prosecution, §97-31-51.
Competency.
  Explosives, unlawful possession.
    Seizure by law enforcement officer, competency to testify, §97-37-23.
Cruelty to animals.
  Hearing on seizure, §97-41-2.
Explosives, unlawful possession.
  Search and seizure by law enforcement officers.
    Competency of officer to testify, §97-37-23.

WOMAN'S RELIEF CORPS.
Unauthorized use of membership buttons, insignia, etc., §97-19-43.

WOODMEN OF THE WORLD.
Unauthorized use of membership buttons, insignia, etc., §97-19-43.

WOOL.
Larceny.
  Shearing wool from dead sheep, §97-17-49.

WORTHLESS CHECKS, §§97-19-55 to 97-19-81.

WRESTLING MATCHES.
Bribery in athletic contests.
  Inapplicability of statute, §97-29-17.

WRITINGS.
Combining parts of several genuine instruments to make one instrument, §97-21-31.
Forgery.
  Destruction, erasure, etc., of writing deemed forgery, §97-21-21.
  Instruments deemed writings, §97-21-5.

Z

ZAPPERS.
Sales tax.
  Falsification of sales records.
    Automated sales suppression devices, zappers and phantom-ware programs, §97-23-111.